RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.1201 through 2.21.1205 and 2.21.1211, adoption of personnel policy	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL OF ARM 2.21.1201 THROUGH 2.21.1205 AND 2.21.1211, ADOPTION OF PERSONNEL POLICY

TO: All Interested Persons.

1. On May 17, 1996 a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts Street, Helena, Montana, to consider the proposed repeal of ARM 2.21.1201 through 2.21.1205 and 2.21.1211, adoption of personnel policy.

2. The rules proposed to be repealed are on pages 2-761 through 2-767 of the Administrative Rules of Montana. (Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

3. Proposing the repeal of ARM 2.21.1201 through 2.21.1205 and 2.21.1211, adoption of personnel policy, does not diminish the department of administration's commitment to the development and administration of effective internal personnel policies by the departments. This sub-chapter was originally adopted to provide a blueprint for the development, review and adoption of statewide and agency personnel policy. The purpose of the rules was to clarify the authority and role of the department of administration in the adoption of personnel policy versus the authority and role of the departments. House Joint Resolution no. 5 of the 54th Legislature calls for departments to review agency rules and delete unnecessary provisions. In reviewing these rules, the department examined 2-18-102(2), MCA, personnel administration -- general policy setting, which states, "The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department." In addition, the department examined 2-15-112, MCA, duties and powers of department heads, which provides in part, (1) "Except as otherwise provided by law, each department head shall . . .

(b) establish policy to be followed by the department and employees . . .

(f) prescribe rules, consistent with the law and rules

established by the governor, for the administration of the department; the conduct of the employees. . . The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public."

It is reasonably necessary to repeal this sub-chapter at this time because as the result of the review of its rules consistent with HJR5, this department has determined these statutory provisions provide a clear distinction between the roles of the department of administration and the roles of the agencies in personnel policy development, making the administrative rules unnecessary. In addition, this department finds personnel staffs in the departments effectively demonstrate the ability to adopt internal policies which remain in compliance with the "policies, procedures, timetables and standards established by the department." A policy-by-policy review and approval step no longer is necessary. In its place, this department proposes a partnership role with other departments in the development of internal personnel policy. This department will continue to maintain a library of internal department policies as a resource for all agencies.

4. Interested persons may submit data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Kitty Ryan, Policy Specialist, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127, faxed to (406)-444-0544, or sent via the Internet to kryan@mt.gov, and must be received no later than May 24, 1996.

5. Kitty Ryan, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided on request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Kitty Ryan, address given in paragraph 4 above, telephone: (406)-444-3233. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY: _____ _____

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State April 15, 1996

BEFORE THE STATE AUDITOR AND COMMISSIONER OF SECURITIES
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 6.6.503, 6.6.507, 6.6.507B, 6.6.508, 6.6.508A, 6.6.510, 6.6.515, 6.6.517, 6.6.519 and 6.6.521 pertaining to medicare supplement insurance.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES PERTAINING TO MEDICARE SUPPLEMENT INSURANCE

TO: All Interested Persons:

1. On May 17, 1996, at 9:30 a.m., a public hearing will be held in the conference room of the State Auditor's Office, Room 270, Mitchell Building, 126 North Sanders, Helena, Montana, to consider the proposed amendment of rules 6.6.503, 6.6.507, 6.6.507B, 6.6.508, 6.6.508A, 6.6.510, 6.6.515, 6.6.517, 6.6.519 and 6.6.521 pertaining to medicare supplement insurance.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.503 APPLICABILITY AND SCOPE

(1) remains the same.

(2) This subchapter does not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

AUTH: 33-1-313, MCA
IMP: 33-22-904, MCA

6.6.507 MINIMUM BENEFIT STANDARDS

(1) through (1)(a)(vii) (A) remain the same.

(viii) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificateholder for the period (not to

exceed 24 months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer must either return to the policyholder or certificateholder that portion of the premium attributable to the period of medicaid eligibility or provide coverage to the end of the term for which premiums were paid, at the option of the insured, subject to adjustment for paid claims.

(1)(a)(viii)(A) through (1)(c)(x)(E) remain the same.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.507B OPEN ENROLLMENT (1) No issuer shall deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for ~~such~~ a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual (who is 65 years of age or older) first enrolled for benefits under medicare Part B. Each medicare supplement policy ~~and~~or certificate currently available from an ~~insurer~~ issuer must be made available to all applicants who qualify under this subsection without regard to age.

(2) remains the same.

AUTH: 33-1-313, MCA
IMP: 33-22-904, MCA

6.6.508 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM (1) A medicare supplement policy form or certificate form must not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(a) At least 75% of the aggregate amount of premiums

earned in the case of group policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices; or

(1)(b) through (3) remain the same.

(4) For policies issued prior to the effective date of this rule, expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from (1)(a) and (b) when combined with actual experience beginning with (insert effective date of this revision) to date; and

(c) The appropriate loss ratio requirement from (1)(a) and (b) over the entire future period for which the rates are computed to provide coverage.

(4) remains the same but is renumbered (5).

~~(5)~~(6) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting forms contained in Appendix A of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 1995, for each type in a standard medicare supplement benefit plan. These forms are hereby adopted and incorporated by reference. These forms may be obtained by writing to the Montana Insurance Commissioner, P.O. Box 4009, Helena, Montana 59604-4009.

(6) through (9) remain the same but are renumbered (7) through (10).

Appendix A to Subchapter 5 is being deleted.

AUTH: 33-1-313, 33-22-904 and 33-22-906, MCA
IMP: 33-15-303, MCA

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES (1) An issuer shall not deliver, or issue for delivery, a policy or certificate to a resident of this state unless the policy form or certificate has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(a) An issuer's name must be as prominently displayed as the name of the association, tradename, or other sponsoring organization.

(b) The policy and certificate must be identified by the proper plan designation which must be included in the form

number.

(2) An issuer shall not use or change premium rates for a medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation, together with the outline of coverage, have been filed with and approved by the commissioner in accordance with the filing requirements and procedures by the commissioner.

(3) through (4)(c) remain the same.

(d) Any change in the rating structure or methodology shall be considered a discontinuance under (4) unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and ~~resultant~~ existing rates.

(ii) remains the same.

(iii) The issuer applies the revised rating methodology to existing business as well as to new business. The issuer must refund the difference between the total amount of premium each insured individual actually paid under the existing rating methodology and the total amount of premium the individual would have paid if the revised rating methodology had been applied since the issue date of that individual's coverage, if the difference is greater than zero dollars. The refund process must be carried out in a form and manner prescribed and approved by the commissioner.

(5) remains the same.

AUTH: 33-1-313, MCA
IMP: 33-22-904, MCA

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) Application forms must include questions designed to elicit information as to whether, as of the date of application, the applicant has another medicare supplement or other health policy or certificate in force or whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements as the following may be used:

(STATEMENTS)

You do not need more than one medicare supplement policy. ~~If you are 65 or older, y~~You may be eligible for benefits under medicaid and may not need a medicare supplement policy.

The benefits and premiums under your medicare supplement policy will be suspended during your entitlement to benefits under medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for medicaid. If you are no longer entitled to medicaid, your policy will be reinstated if requested within 90 days of losing medicaid eligibility.

Counseling services may be available in your state to provide advice concerning your purchase of medicare supplement insurance and concerning medicaid.

To the best of your knowledge:

(1) Do you have another medicare supplement insurance policy or certificate in force (including health care service contract, health maintenance contract)?

(2) If the answer to (1) is yes, with which company?

(3) Do you have any other health insurance policies that provide benefits which this medicare supplement policy would duplicate?

(4) If the answer to (3) is yes, with which company?

(5) What kind of policy?

(6) If the answer to questions (1) or (3) is yes, do you intend to replace these medical or health policies with this policy (certificate)?

(7) Are you covered by medicaid?

(2) through (5) remain the same.

AUTH: 33-1-313, 33-22-904 and 33-22-907, MCA
IMP: 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.515 STANDARDS FOR CLAIMS PAYMENT (1) An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203) by:

(a) through (d) remain the same.

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and any cost may not be passed on to the insured; and

(1)(f) through (2) remain the same.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.517 PERMITTED COMPENSATION ARRANGEMENTS

(1) ~~An issuer or other entity may provide commission or other compensation to a producer for the sale of a medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.~~ Compensation must be based on a level commission schedule for no less than 5 years.

~~(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.~~

~~(3) No issuer or other entity shall provide compensation to its producers and no producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.~~

~~(4)~~(2) For purposes of this ~~section~~ rule, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and service and finders fees.

~~(5)~~(3) As part of the annual filing under ARM 6.6.508~~(3)~~(9), the entity providing medicare supplement policies shall provide copies of commission schedules.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.519 STANDARDS FOR MARKETING (1) An issuer directly or through its producers shall:

(a) and (b) remain the same.

(c) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits ~~clearly and substantially~~ greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized in ARM 6.6.517.

(d) through (f) remain the same.

(g) provide to the enrollee appropriate disclosure statement(s) if the enrollee has accident and sickness insurance. These statements must be identical to the

disclosure statements in Appendix C of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 1995, with the corrections contained in the Health Care Financing Administration letter to Insurance Commissioners, dated March 21, 1996. These disclosure statements are hereby adopted and incorporated by reference. These disclosure statements may be obtained by writing to the Montana Insurance Commissioner, P.O. Box 4009, Helena, Montana 59604-4009.

(2) and (3) remain the same.

AUTH: 33-1-313, 33-18-235 and 33-22-904, MCA
IMP: 33-15-303, 33-18-235, and 33-22-901 through 33-22-924, MCA

6.6.521 REPORTING OF MULTIPLE POLICIES (1) On or before March 1 of each year, every issuer shall report the following information, contained in Appendix B of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 1995, for every individual resident of this state for which the issuer has in force more than one medicare supplement insurance policy or certificate~~.~~. This form is hereby adopted and incorporated by reference. This form may be obtained by writing to the Montana Insurance Commissioner, P.O. Box 4009, Helena, Montana 59604-4009.

(1)(a) through (2) remain the same.

Appendix B to Subchapter 5 is being deleted.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303 and 33-22-901 through 33-22-924, MCA

REASON: 6.6.503, 6.6.507, 6.6.507B, 6.6.508, 6.6.517 and 6.6.519 are being amended to comply with the requirements of Public Law 103-432.

6.6.508A(1)(b) is being amended to clarify the requirements of 33-15-303, MCA.

6.6.508A(2) is being amended to conform with the requirements of 33-22-907, MCA.

In 6.6.508(d)(i) "resulting" is replaced by "existing" to make the rule consistent with federal law.

6.6.508(d)(iii) is being amended to clarify the definition of a discontinuance and to prohibit unjust, unfair, or unfairly discriminatory provisions pursuant to 33-22-904(3), MCA.

6.6.515 is being amended to clarify the requirements for compliance with 33-22-904, MCA.

Changes are being made to correct grammar, style and format.

Appendices A and B to Subchapter 5 are being deleted in their entirety because they are being incorporated by reference.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Heather Cafferty, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than May 24, 1996.

4. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by no later than 5:00 p.m., on May 14, 1996, to advise us as to the nature of the accommodation needed. Please contact Heather Cafferty, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604.

5. Gary Spaeth has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Securities

By D. Russell Harper
G. Russell Harper
Deputy State Auditor

By Elizabeth A. O'Halloran
Elizabeth A. O'Halloran
for Gary Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of April, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF
INSURANCE OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 6.6.1101 through 6.6.1104 and 6.6.1110 pertaining to Credit Life and Disability Insurance.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons.

1. On Wednesday, May 15, 1996, at 9:30 a.m., a public hearing will be held in the conference room at the State Auditor's Office, 126 North Sanders, Helena, Montana, to consider the amendment of Rules 6.6.1101 through 6.6.1104 and 6.6.1110, pertaining to Credit Life and Disability Insurance.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.1101 CREDIT LIFE INSURANCE--ACCEPTABLE RATES (1) Except as may otherwise be provided in this subchapter, the following rates for ~~decreasing term~~credit life insurance may be considered "prima facie acceptable rates" for purposes of ~~section~~ 33-21-205, MCA. Rates which are filed by any company for the indicated coverage will be considered acceptable without substantiating data if they do not exceed these premium rates:

(a) For decreasing term credit life insurance, ~~S~~single premium ~~life insurance~~ rates per ~~one hundred dollars~~ ($100~~)~~ of initial indebtedness repayable in 12 equal monthly installments during the period of coverage:

(i) Single life - $.~~60~~40;

(ii) Joint life - $.~~90~~60.

(b) For decreasing term credit life insurance, ~~M~~monthly premium rates per ~~one thousand dollars~~ ($1,000~~)~~ of outstanding balance, where the initial indebtedness is repayable in 12 equal installments during the period of coverage:

(i) Single life - $.~~95~~62;

(ii) Joint life - $~~1.45~~.93.

(c) For level term credit life insurance, single premium rates per $100 of initial indebtedness repayable in 12 equal monthly installments during the period of coverage:

(i) Single life - $.74;

(ii) Joint life - $1.11.

(2) remains the same.

(3) Single premium rates for indebtedness repayable in installments other than 12 in number shall be 1/12 of the above premium rate multiplied by the number of full months in the period of indebtedness. Premium rates for credit life insurance not covered under ~~subsection~~ (1) of this rule shall be the actuarial equivalent of rates established by that subsection.

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

6.6.1102 LIMITATION ON PRESUMPTION OF REASONABLENESS

(1) The rates provided by ARM 6.6.1101 are presumed to produce reasonable benefits in relation to premium only if:

(a) remains the same.

(b) ~~There are~~The contract contains no age restrictions~~, or the only restrictions are~~more severe than those making ineligible for coverage debtors ~~not~~ older than the applicable age limit, which ~~shall~~must not be less than attained age 65 years if such limit applies to the age when the insurance attaches, or not less than attained age 66 if such limit applies to the age on the scheduled maturity date of the debt~~, as the insurer may elect~~.

(i) If the insurer used ages 70 and 71, or higher ages, instead of ages 65 or 66, the prima facie rates in 6.6.1101(1) may be increased by 5%.

(ii) If the insurer imposes no age limit, the prima facie rates may be increased by 10%. ~~However, if policy is issued beyond the age limits established in the policy due to misstatement of age of the debtor, subsection (2) shall apply.~~

(2) If a debtor exceeds the eligibility age, has correctly stated his age in writing, or otherwise, and a certificate or policy is issued to him in error, the insurer has the right within 60 days from the date of the loan or extension of credit to terminate coverage and refund any premiums paid. Failure on the part of the insurer to act in a timely manner will subject it to the full risk regardless of the age.

(a) If the debtor dies within the 60 day period before the insurer terminates coverage, the insurer will be liable for the amount of the debtor's insurance at death.

(3) If the policy is issued beyond the age limits established in the policy due to misstatement of age of the debtor, (2) of this rule will apply.

(3) remains the same but is renumbered (4).

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

6.6.1103 CREDIT DISABILITY INSURANCE--ACCEPTABLE RATES

(1) and (2) remain the same.

The table following (2) is deleted in its entirety and is being replaced by the following table.

Number of months in which indebtedness is repayable	Nonretroactive Benefits Elimination Period			Retroactive Benefits Waiting Period		
	7-day	14-day	30-day	7-day	14-day	30-day
6 or less	$1.77	$1.35	$0.85	$1.87	$1.70	$1.40
7	1.86	1.43	0.91	2.00	1.82	1.50
8	1.96	1.52	0.97	2.13	1.93	1.59
9	2.05	1.60	1.03	2.25	2.05	1.68
10	2.15	1.68	1.09	2.38	2.17	1.78
11	2.24	1.77	1.15	2.51	2.28	1.87
12	2.34	1.85	1.21	2.64	2.40	1.96
13	2.39	1.90	1.25	2.72	2.47	2.03
14	2.44	1.95	1.29	2.80	2.55	2.09
15	2.50	2.00	1.33	2.88	2.62	2.15
16	2.55	2.05	1.36	2.96	2.69	2.21
17	2.60	2.10	1.40	3.04	2.77	2.27
18	2.66	2.15	1.44	3.12	2.84	2.33
19	2.69	2.19	1.48	3.19	2.90	2.39
20	2.73	2.24	1.52	3.27	2.97	2.45
21	2.77	2.28	1.55	3.34	3.03	2.51
22	2.81	2.33	1.59	3.41	3.10	2.57
23	2.85	2.37	1.63	3.48	3.16	2.63
24	2.89	2.41	1.67	3.55	3.23	2.69
25	2.91	2.44	1.69	3.60	3.28	2.73
26	2.94	2.47	1.72	3.66	3.33	2.77
27	2.96	2.50	1.74	3.71	3.38	2.81
28	2.99	2.53	1.77	3.77	3.43	2.86
29	3.01	2.56	1.79	3.83	3.48	2.90
30	3.04	2.59	1.82	3.88	3.53	2.94
31	3.06	2.61	1.85	3.94	3.58	2.98
32	3.09	2.64	1.87	3.99	3.63	3.02
33	3.11	3.67	1.90	4.05	3.68	3.07
34	3.14	2.70	1.92	4.10	3.73	3.11
35	3.16	2.73	1.95	4.16	3.78	3.15
36	3.19	2.76	1.97	4.21	3.83	3.19
37	3.21	2.78	1.99	4.25	3.87	3.22
38	3.22	2.80	2.01	4.30	3.91	3.25
39	3.24	2.82	2.03	4.34	3.94	3.29
40	3.26	2.84	2.05	4.38	3.98	3.32
41	3.28	2.86	2.07	4.42	4.02	3.35
42	3.30	2.89	2.09	4.46	4.06	3.38
43	3.31	2.91	2.11	4.51	4.10	3.41
44	3.33	2.93	2.13	4.55	4.13	3.45
45	3.35	2.95	2.15	4.59	4.17	3.48
46	3.37	2.97	2.17	4.63	4.21	3.51

Number of months in which indebtedness is repayable	Nonretroactive Benefits			Retroactive Benefits		
	Elimination Period			Waiting Period		
	7-day	14-day	30-day	7-day	14-day	30-day
47	$3.39	$2.99	$2.19	$4.67	$4.25	$3.54
48	3.41	3.02	2.21	4.72	4.29	3.57
49	3.42	3.03	2.23	4.75	4.32	3.60
50	3.43	3.05	2.24	4.78	4.35	3.62
51	3.45	3.07	2.26	4.82	4.38	3.65
52	3.46	3.08	2.27	4.85	4.41	3.68
53	3.47	3.10	2.29	4.89	4.44	3.70
54	3.49	3.12	2.31	4.92	4.47	3.73
55	3.50	3.14	2.32	4.96	4.51	3.75
56	3.51	3.15	2.34	4.99	4.54	3.78
57	3.53	3.17	2.36	5.02	4.57	3.81
58	3.54	3.19	2.37	5.06	4.60	3.83
59	3.55	3.20	2.39	5.09	4.63	3.86
60	3.57	3.22	2.41	5.13	4.66	3.88
61	3.58	3.24	2.42	5.15	4.68	3.90
62	3.59	3.25	2.43	5.18	4.71	3.92
63	3.60	3.26	2.44	5.21	4.73	3.94
64	3.61	3.28	2.46	5.23	4.76	3.96
65	3.62	3.29	2.47	5.26	4.78	3.98
66	3.63	3.30	2.48	5.28	4.80	4.00
67	3.65	3.32	2.50	5.31	4.83	4.02
68	3.67	3.34	2.51	5.34	4.85	4.04
69	3.69	3.35	2.52	5.36	4.87	4.06
70	3.71	3.37	2.53	5.39	4.90	4.08
71	3.73	3.39	2.55	5.41	4.92	4.10
72	3.74	3.40	2.56	5.44	4.94	4.12
73	3.76	3.42	2.57	5.46	4.96	4.14
74	3.78	3.43	2.58	5.48	4.98	4.15
75	3.79	3.45	2.59	5.50	5.00	4.17
76	3.81	3.46	2.60	5.53	5.02	4.19
77	3.82	3.48	2.61	5.55	5.04	4.20
78	3.84	3.49	2.62	5.57	5.06	4.22
79	3.85	3.50	2.63	5.59	5.08	4.24
80	3.87	3.52	2.65	5.61	5.10	4.25
81	3.89	3.53	2.66	5.63	5.12	4.27
82	3.90	3.55	2.67	5.66	5.14	4.29
83	3.92	3.56	2.68	5.68	5.16	4.30
84	3.93	3.58	2.69	5.70	5.18	4.32
85	3.95	3.59	2.70	5.72	5.20	4.33

Number of months in which indebtedness is repayable	Nonretroactive Benefits Elimination Period			Retroactive Benefits Waiting Period		
	7-day	14-day	30-day	7-day	14-day	30-day
86	$3.96	$3.60	$2.71	$5.73	$5.21	$4.34
87	3.97	3.61	2.72	5.75	5.23	4.36
88	3.99	3.62	2.72	5.77	5.24	4.37
89	4.00	3.63	2.73	5.78	5.26	4.38
90	4.01	3.65	2.74	5.80	5.27	4.39
91	4.02	3.66	2.75	5.82	5.29	4.41
92	4.04	3.67	2.76	5.83	5.30	4.42
93	4.05	3.68	2.77	5.85	5.32	4.43
94	4.06	3.69	2.78	5.87	5.33	4.45
95	4.08	3.71	2.79	5.88	5.35	4.46
96	4.09	3.72	2.80	5.90	5.36	4.47
97	4.10	3.73	2.80	5.91	5.38	4.48
98	4.11	3.74	2.81	5.93	5.39	4.49
99	4.12	3.75	2.82	5.94	5.40	4.50
100	4.13	3.76	2.83	5.95	5.41	4.51
101	4.15	3.77	2.83	5.97	5.43	4.52
102	4.16	3.78	2.84	5.98	5.44	4.53
103	4.17	3.79	2.85	6.00	5.45	4.54
104	4.18	3.80	2.86	6.01	5.46	4.55
105	4.19	3.81	2.86	6.02	5.47	4.56
106	4.20	3.82	2.87	6.04	5.49	4.57
107	4.21	3.83	2.88	6.05	5.50	4.58
108	4.22	3.84	2.89	6.06	5.51	4.59
109	4.23	3.85	2.89	6.07	5.52	4.60
110	4.24	3.86	2.90	6.08	5.53	4.61
111	4.25	3.86	2.91	6.09	5.54	4.62
112	4.26	3.87	2.91	6.10	5.55	4.62
113	4.27	3.88	2.92	6.11	5.56	4.63
114	4.28	3.89	2.92	6.12	5.57	4.64
115	4.29	3.90	2.93	6.13	5.58	4.65
116	4.30	3.91	2.94	6.14	5.58	4.65
117	4.31	3.92	2.94	6.15	5.59	4.66
118	4.32	3.92	2.95	6.16	5.60	4.67
119	4.33	3.93	2.96	6.17	5.61	4.68
120	4.33	3.94	2.96	6.18	5.62	4.68

(3) The premium rates for joint credit disability coverage shall not exceed 1 2/3 times the permitted single credit disability rate.

(3) and (4) remain the same but are renumbered (4) and (5).

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

6.6.1104 LIMITATION OF PRESUMPTION OF REASONABLENESS (1) through (1)(a)(i) remain the same.

(b) Coverage is provided or offered ~~to all debtors regardless of age or~~ to all debtors not older than the applicable age limit, which shall not be less than attained age 65 years if such limit applies to the age when the insurance attaches, or not less than attained age 66 years if such limit applies to the age on the scheduled maturity date of the debt.

(i) If the insurer uses ages 70 and 71, or higher ages, instead of ages 65 and 66, the prima facie rates in ARM 6.6.1103(2) may be increased by 5%.

(ii) If the insurer imposes no age limit, the prima facie rates may be increased by 10%.

(c) ~~That~~The contract may require submission of evidence of insurability~~;~~, and

(d) ~~That~~The contract may require the debtor be gainfully employed (or unemployed solely because of seasonal lay-off) at the time the insurance becomes effective and meets other standards as provided in these **~~regulations~~** rules.

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

6.6.1110 ANTICIPATED LOSS RATIO OF "CLAIMS INCURRED" TO "PREMIUMS EARNED" OF NOT LESS THAN ~~FIFTY~~SIXTY PERCENT (1) ~~"It is hereby ruled that a~~As a basic test of the reasonableness of the relation of benefits to ~~the~~ premium ~~charged, the~~an anticipated loss ratio of "claims incurred" to "premiums earned" ~~of not less than 50% will be developed~~must be at least 60%.

(2) If ~~it comes to the attention of this department that~~ the total current expected expenses (including acquisition expenses) exceed ~~50%~~40% of the premium dollar, ~~such information shall~~this will be considered ~~as~~ prima facie evidence that ~~such company~~the insurer intends to write credit business at a loss ratio not in compliance with ~~the regulations as stated~~these rules. The ~~company shall~~insurer will then be required to:

(a) Reduce the premium rates as needed to produce an anticipated loss ratio of at least 60%, and file these rates with the commissioner; or

(b) ~~S~~show ~~just cause~~ why the premium rates ~~as~~ currently filed should not be reduced."

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

3. REASON: Changes have been made to correct grammar, style and format.

6.6.1101: The credit life prima facie rates in subsection (1) must be lowered because of the increase of the minimum loss ratio to 60%, taking into account the 1992-1994 actual experience while leaving room for potential higher-than-expected claims. Prima facie rates for level term credit life insurance are added under new subsection (1)(c) because rates for that type of insurance were previously not included in the rule. Language in section (1) is changed to clarify which rates are intended to refer to which type of credit insurance.

6.6.1102: Subsection (1)(b) is reworded to clarify the intent of the text. Provisions are added to allow the insurer to increase rates if their age restrictions are more liberal than the minimum allowed by law. This would allow insurers to cover the additional risk incurred by loosening the age restrictions. The last sentence in subsection (1) is renumbered as subsection (3) for clarification.

6.6.1103: The credit disability prima facie rates in subsection (2) are lowered in connection with the increase of the minimum loss ratio to 60%, taking into account the 1992-1994 actual experience. The rate structure is being changed to more accurately reflect the risk based on the period of the loan. Two additional columns are being added to provide prima facie rates for 7-day retroactive and 7-day non-retroactive policies. Insurers must currently provide an actuarial justification for the rates for these types of policies; including the prima facie rates in the table will allow them to file these rates without such a justification.

New subsection (3) is added to provide a maximum factor to apply to the prima facie single rates to obtain prima facie joint rates appropriate to cover the extra risk incurred by joint coverage compared to single coverage.

6.6.1104: Subsection (1)(b) is amended to clarify the intent of the text. Provisions are added to allow the insurer to increase rates if their age restrictions are more liberal than the minimum allowed by law. This would allow insurers to cover the additional risk incurred by loosening the age restrictions.

6.6.1110: The minimum required loss ratio is increased from 50% to 60% to comply with the standard established by the National Association of Insurance Commissioners (NAIC), and to ensure that a reasonable share of the consumer's premium payment is used to pay credit insurance benefits.

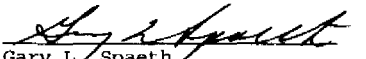
4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Margaret Miksch, Montana Insurance Department, P.O. 4009, Helena, Montana 59604, and must be received no later than May 23, 1996.

5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by no later than 5:00 p.m. on May 8, 1996, to advise us as to the nature of the accommodation needed. Please contact Margaret Miksch, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604.

6. Gary L. Spaeth has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance

By: 
Claudia Clifford
Assistant State Auditor

By: 
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 11th day of April, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 6.6.4102 and 6.6.4202 through 4204, 6.6.4207 and 6.6.4210 and the proposed adoption of new rules I and II pertaining to fee schedules and the Continuing Education Program for Insurance Producers and Consultants	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Interested Persons

1. On May 16, 1996, at 1:30 p.m., a public hearing will be held in Room 111, Lee Metcalf Building, 1520 East 6th Avenue, Helena, Montana, to consider the amendment of Rules 6.6.4102 and 6.6.4202 through 6.6.4204, 6.6.4207 and 6.6.4210, and the adoption of new rules I and II.

2. The proposed amendments and new rules provide as follows (new text is underlined; text to be deleted is interlined):

6.6.4102 CONTINUING EDUCATION FEES

(1) through (2)(a) remain the same.

(b) Submission of a course or program by an individual Montana insurance producer or consultant for review and one-time approval....$25.00

(b) remains the same but is renumbered (c).

(3) and (4) remain the same.

AUTH: 33-1-313, 33-2-708 and 33-17-1206, MCA
IMP: 33-2-708, 33-17-1204, 33-17-1205 and 33-17-1207, MCA

6.6.4202 DEFINITIONS For the purposes of this sub-chapter, the following terms have the following meanings:

(1) "Accredited ~~educational institution"~~ university or college" means an institution of higher learning that is certified by its appropriate accrediting agency to meet that agency's prescribed standards.

(2) through (6) remain the same.

~~(7) "Hour" means 60 minutes of time, of which at least 50 minutes must be of continuous instruction.~~

(8) remains the same but is renumbered (7).

~~(9)~~ (8) "Licensee" means an individual required to be licensed under Title 33, chapter 17, parts 2, 4 or 5, MCA~~, except for those licensees involved in the selling of credit life and disability insurance incidental to other noninsurance activities~~.

(10) and (11) remain the same but are renumbered (9) and (10).

~~(12)~~ (11) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submits courses for department review and offers or provides approved courses for continuing education credit to allow licensees to meet the requirements of 33-17-1203 and 33-17-1204, MCA, and is responsible for those course offerings, or any individual Montana insurance producer or consultant who submits a course, pursuant to ARM 6.6.4203(14) for department review to allow that licensee to meet the requirements of 33-17-1203 and 33-17-1204, MCA.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

6.6.4203 COURSE SUBMISSIONS (1) Except as provided in (14) below, the ~~The~~ following standards, by which acceptability of submitted courses should be evaluated, must all be certified by the sponsoring organization:

(1)(a) through (2)(m) remain the same.

(n) instructors, if any;

(o) a designated contact person; ~~and~~

(p) a written explanation of examination security measures and examination administration methods~~.~~ ; and

(q) written notification of additional dates of course offering to the department 15 days in advance.

(3) Requests for approval of courses must be ~~filed with~~ received by the commissioner no less than ~~60~~ 15 days prior to the anticipated starting date of the course, except as provided in (14) below.

(4) through (7) remain the same.

(8) ~~A sponsoring organization may not schedule more than eight hours of class time in one day.~~

~~(9) Course~~Except as provided in (15) below, course approval is for a period of two years following the course approval date.

(10) remains the same but is renumbered (9).

(11) - (11)(q) remain the same but are renumbered (10) - (10)(q).

(h) computer science; or

(i) ~~required~~ pre-license training~~; or~~

~~(j) securities, other than variable contracts~~.

(12) remains the same but is renumbered (11).

~~(13)~~ (12) Based on the evaluation of the course material submitted, the number of credit hours assigned may, for some courses, be less than the total amount of time spent by the licensee in the course.

(14) remains the same but is renumbered (13).

(14) An individual Montana insurance producer or consultant who must meet the requirement of 33-17-1203, MCA, who submits a course for review and approval to meet that requirement:

(a) Need not comply with (1)(a), (2)(g), (2)(k), (2)(m), (2)(p), (5)(a), (5)(b), (5)(c), (5)(d), (6), or (7) of this rule in preparing the course submission; and

(b) Must submit the course no more than 45 days after the date of offering.

(15) Any credit hours assigned to a course submitted as described in (14), are available only to the producer or consultant who made the course submission for that one offering.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4204 QUALIFICATIONS FOR INSTRUCTORS (1) through (1)(b)(iii) remain the same.

(2) No person will be qualified as an instructor who:

(a) Has had an insurance producer's or consultant's license suspended or revoked in Montana or any other state; ~~or~~

(b) ~~At the time of submission, has~~ Has any outstanding fines for insurance-related disciplinary offenses imposed by the commissioner or by any regulatory authority in any other state~~.~~;

(c) Has been found to have violated or not complied with a provision of Title 33, MCA, during a contested case proceeding within the preceding two years; or

(d) Has been found to have violated a rule, subpoena or order of the commissioner or by any regulatory authority in any other state, during a contested case proceeding within the preceding two years.

(3) ~~The character of an instructor, based on such information as prior felony and administrative history, may be considered in deciding instructor qualifications.~~ An instructor may be disqualified, if that person:

(a) Has been convicted of a felony;

(b) Has falsified documents filed with the commissioner;

(c) Has misrepresented course approval, credit hour assignment, curriculum, or content of a course to students or prospective students;

(d) Has solicited students as clients or recruited students as candidates for appointment by insurers or agencies during the instructional portion of a course offering; or

(e) Has been found to have violated other applicable statutes or administrative rules.

(4) and (5) remain the same.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

6.6.4207 EXTENSIONS OF TIME FOR COURSE COMPLETIONS (1) A licensee may request an extension of the period for required credit hour completion prior to the annual ~~filing~~ deadline set in 33-17-1203, MCA.

(2) through (4) remain the same.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 2-4-631 and 33-17-1205, MCA

6.6.4210 SANCTIONS AGAINST COURSES AND SPONSORING ORGANIZATION SUSPENSION

(1) through (2) remain the same.

(3) The commissioner reserves authority to issue a cease and desist order under 33-1-318, MCA~~, in appropriate urgent cases~~.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204 and 33-17-1205, MCA

NEW RULE I REQUESTS FOR RECONSIDERATION OF CREDIT HOUR ASSIGNMENT (1) A sponsoring organization may request reconsideration of the credit hours assigned to a course. Such requests must:

(a) Be in writing;

(b) Include any additional supporting documentation on which the request is based; and

(c) Be submitted to the commissioner within 20 business days of notification to the sponsoring organization of assignment of credit hours to the course.

(2) Requests for reconsideration, the original course submission and any additional materials provided to support the request will be presented at the next corporal meeting, as defined in 2-3-202, MCA, of the advisory council.

(3) After evaluating the request for reconsideration, the advisory council may recommend to the commissioner to increase, decrease or maintain the credit hours assigned to the course.

(4) The commissioner will review the recommendation of the advisory council and assign credit hours to the course.

(5) Increased credit hours assigned to a course by the commissioner will be granted to licensees who complete the course after the submission date of the request for reconsideration of credit hour assignment.

(6) Decreased credit hours assigned to a course by the commissioner will be granted to licensees who complete the course after notification to the sponsoring organization of assignment of revised credit hours to the course.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

NEW RULE II REQUESTS FOR RECONSIDERATION OF COURSE DISAPPROVAL (1) A sponsoring organization may request reconsideration of the disapproval of a course. Such requests must:

(a) Be in writing;

(b) Include any additional supporting documentation on which the request is based; and

(c) Be submitted to the commissioner within 20 business days of notification to the sponsoring organization of disapproval of the course.

(2) Requests for reconsideration, the original course submission and any additional materials provided to support the request will be presented at the next corporal meeting, as defined in 2-3-202, MCA, of the advisory council.

(3) After evaluating the request for reconsideration, the advisory council may recommend to the commissioner to approve or disapprove the course.

(4) The commissioner will review the recommendation of the advisory council and approve or disapprove the course.

(5) Credit hours assigned a course approved by the commissioner will be granted to licensees who complete the course after the submission date of the request for reconsideration of course disapproval.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

REASON: Changes have been made to correct grammar, style and format.

6.6.4102: Is amended to include fees for individual submission of courses.

6.6.4202: (1) and (7) are amended for clarity.

(9) is amended to include 1995 legislative changes.

(12) is amended to include individual insurance licensee submission of courses.

6.6.4203: (1) through (14) are amended for clarity.

New sections (14) and (15) are included to provide a method for individual insurance licensee submission of courses.

6.6.4204: (2)(b) is amended for clarity.

New subsections (c) and (d) are included for clarity.

(3) is struck and new subsections (a) through (e) are included for clarity.

6.6.4207: Is amended for clarity.

6.6.4210(3) is amended for clarity.

New Rule I: Is included to provide a method for course credit hour assignment appeal.

New Rule II: Is included to provide a method for course disapproval appeal.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mary A. Arnold, Montana Insurance Department, P.O. Box 4009, Helena, Montana, 59604, and must be received no later than May 28, 1996.

4. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the Department no later than 5:00 p.m., May 9, 1996, to advise us as to the nature of the accommodation needed. Please contact Mary A. Arnold, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604.

5. Gary L. Spaeth has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: G. Russell Harper
G. Russell Harper
Deputy State Auditor

By: Elizabeth A. O'Halloran
Elizabeth A. O'Halloran
for Gary Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of April, 1996.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to athletic events and participants	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO ATHLETIC EVENTS AND PARTICIPANTS

TO: All Interested Persons:

1. On May 16, 1996, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to athletic events and participants.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.8.2804 LICENSING REQUIREMENTS (1) will remain the same.

(2) All licenses shall expire ~~on December 31st of each year~~ in accordance with ARM 8.2.208.

(3) Before holding any specific athletic event ~~A~~any club holding an annual license shall obtain a separate permit or sanction from the board ~~before holding any specific athletic event~~ at least 21 days prior to the event.

(a) through (4) will remain the same.

(5) Prior to issuance of a promoter's license, the promoter shall, on a form provided by the board, deliver to the board a surety bond in the amount of $5,000, or 5% of projected gross revenue, whichever is greater, ~~on forms provided by the board, for the purposes set forth at 23-3-502, MCA~~. The board shall determine the amount of the surety bond based on the facts and circumstances of the particular event, including a projection of gross revenue submitted by the promoter. The bond shall be forfeited to the board as a penalty bond in the event the board finds that the promoter has violated any provision of Title 23, chapter 3, MCA, or rule promulgated thereunder.

(6) through (8)(a) will remain the same.

(9) Contests staged on ~~government or~~ federal or tribal land ~~Indian reservations~~ within the state of Montana, shall be governed by such rules and regulations as may be agreed upon between the governing bodies concerned and the board of athletics.

(10) and (11) will remain the same.

(12) No applicant, licensee, or official shall appear at ringside while under the influence of alcohol or mood-altering drugs, unless prescribed to the individual by a physician.

(13)(a) through (e) will remain the same.

(14) No person shall charge or receive an admission fee for exhibiting within this state a telecast of any bout or athletic event as defined at ARM 8.8.2802, held in this state, without a permit issued by the board. Permits are required for simultaneous telecasts, closed circuit telecasts, or any transmission of any kind, including but not limited to, transmission via microwave, closed circuit, satellite, or fiber optic link.

(15) All contestant applicants or contestant licensees must submit a certified laboratory report documenting that the contestant has, within 30 days prior to the match in which the contestant is scheduled to appear, been administered an HIV test for the presence of AIDS antibodies and that the results of such test were negative."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-501, 23-3-502, MCA

REASON: In (2), the renewal date for all licensing boards is now set forth under the Department rule referenced above. In (3), grammar changes are made. In (5), the board wishes to clarify the nature of the bond as a penalty bond to allow the board to collect the entire amount of the bond upon the finding referenced in the rule. The proposed language further addresses protection for the board where the board's collectible percentage of revenue in a given event may exceed $5,000. In (12), the board proposes to better define "drugs" to exclude drugs that have been prescribed to the contestant by a licensed physician. The word "government" in (9) is more correctly identified as federal or tribal land. Subsection (15) is added based on the board's finding that contestants who engage in the events under the board's jurisdiction frequently suffer open wounds during a match, and that the other contestant, referee, officials, or members of the public in proximity to the ring may come in contact with the injured contestant's blood.

"8.8.2805 CONTRACTS AND PENALTIES (1) and (2) will remain the same.

~~(3) No fee shall be paid to a contestant who does not complete the terms of the contract or who is deemed by the board to be putting forth less than maximum effort.~~

(4) through (8) will remain the same, but will be renumbered (3) through (7)."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-603, MCA

REASON: The board proposes to delete this subsection because the appropriate judge of such conduct is the referee, not the board. Further, the rule purports to authorize the board to dictate the performance of contracts to which it is not a party.

"8.8.2901 BOXING CONTESTANTS (1) through (6) will remain the same.

(7) In any case where the referee decides that the contestants are not honestly competing, that the knockout is a

"dive" or the foul a prearranged action, the athletic event shall be stopped and no decision rendered. ~~If the board finds that the action was a "dive", then the purse reverts to the board and shall be deposited in the board's special revenue account.~~

(8) Any contestant who participates in a sham or fake bout shall be disqualified and shall not thereafter be permitted to contend in any bout in this state for a period of at least 6 six months for the first offense. For the second offense he shall be disqualified from further admission or participation in any athletic event held or given in the state of Montana for a period ~~not to exceed~~ of at least one year.

(9) through (12) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: The last sentence in (7) unnecessarily repeats the statute at 23-3-603, MCA, which defines, as a basis for disciplinary action, "engaging in any sham match or exhibition." The board's authority to institute disciplinary action and resulting sanctions are set forth in Title 37, chapter 1 and need not be set forth here. Moreover, the authorized sanctions include an administrative fine rather than causing the contestant to forfeit the purse. Changes in (8) provide flexibility in sanctioning a contestant found to have engaged in the prohibited conduct.

"8.8.3301 PROMOTER-MATCHMAKER (1) and (2) will remain the same.

(3) Promoters shall receive sanction from the board before any sale of tickets or publicity is issued. Sanction will not be granted until all requirements of ARM 8.8.2804 and this rule are met. All substitutions shall be announced as soon as substitutions are known.

(4) through (7)(b) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-501, 23-3-601, MCA

REASON: The proposed amendment is necessary to make clear that all appropriate licenses and sanctions must be received, which necessarily include submission of the bond set forth in 23-3-502, MCA, and ARM 8.8.2804, prior to any sale of tickets, in order that the board be protected prior to the promoter collecting revenue from ticket sales.

3. The Board is proposing to repeal ARM 8.8.2807, the text of which can be located at page 8-254, Administrative Rules of Montana. The authority sections are 23-3-405, 37-1-136, MCA, and the implementing sections are 23-3-405, 23-3-603, MCA. The reason for the proposed repeal is that the authorization, procedure, and possible sanctions for disciplinary action are set forth in Title 37, chapter 1, MCA, and need not be set forth in rule.

4. The proposed new rules will read as follows:

"I UNPROFESSIONAL CONDUCT In addition to the provisions of 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 23, chapter 3, MCA, or rule promulgated thereunder, or any order of the board;

(2) Violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

(3) Impersonating any licensee or representing oneself as a licensee for which one has no current license;

(4) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose;

(5) Breaching any contract with any person contracting for services of the license holder, which breach results in a material injury to another person;

(6) Failing to use a legible written contract or statement containing the following terms:

(i) the date of the match,

(ii) compensation,

(iii) the promoter's name, address, license number, and expiration date,

(iv) the weight at which the contestant will weigh-in,

(v) the name, address, and telephone number of the board;

(7) Offering, giving, or promising anything of value or benefit to any federal, state, or local employee or official for the purpose of influencing that employee or official to circumvent federal, state or local law, regulation, or ordinance governing the licensee's profession;

(8) Using any dangerous drug or controlled substance illegally while providing professional services;

(9) Failing to cooperate with a board inspection or investigation in any material respect;

(10) Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority."

Auth: Sec. 37-1-319, 23-3-405, MCA; IMP, Sec. 37-1-308, 23-3-603, MCA

REASON: This proposed rule addresses the unique circumstances which may arise in the conduct of licensees of the board and serves to define a standard of conduct.

"II ELIMINATION-TYPE EVENTS (1) All "toughman" and other similar elimination-type boxing contests shall be conducted under the authority of the board and conform where applicable to Title 8, chapter 8, sub-chapters 28, 29, 31, 32, 33, and 34 of the Administrative Rules of Montana, unless provided for specifically in this rule.

(2) Contests may be conducted in the following weight classifications:

(a) light .....150 to 175 lbs.
(b) middle .....176 to 195 lbs.
(c) heavy .....196 and over

(3) No bout shall exceed three rounds of not more than 60 seconds in length, with a minimum of one minute rest period between rounds. There shall be a rest period of one minute between consecutive rounds. Bouts must be staggered to ensure adequate rest time to all contestants.

(4) Contestants may participate in more than one bout in each contest; however, no contestant shall compete for more than twelve rounds in any single contest.

(5) Contestants shall wear 16 ounce gloves. In addition to the protective gear specified in ARM 8.8.2901, contestants shall wear protective gear for the head."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

REASON: The proposed new rule is necessary to address requests made to the board to hold "toughman" contests and ensure that such contests are carried out safely.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Athletics, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 23, 1996.

6. Colleen A. Graham, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIR

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 15, 1996.

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to chiropractors	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO CHIROPRACTORS

TO: All Interested Persons:

1. On May 16, 1996, at 1:00 p.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the practice of chiropractic.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.12.601 APPLICATIONS; ~~EDUCATIONAL REQUIREMENTS~~

~~(1) The admission to examination for licensure shall be based upon official verification from a college of chiropractic that has maintained accreditation with the council on chiropractic education (CCE) during the entire duration of the applicant's course of study. As part of either the two years of college or the education program at the chiropractic college, each applicant must have had 120 classroom hours of instruction in physiotherapy.~~

~~(2) Official transcripts from all colleges and chiropractic college diploma shall accompany the application and be submitted directly to the office of the board.~~

~~(3) In addition, all applicants, including reciprocal applicants, must provide a certified copy of examination results from the national board, parts I & II including physiotherapy and part III, written clinical competency exam, to the board prior to examination.~~

~~(4) Applications will be reviewed on an individual basis with approval at the discretion of the board.~~

~~(5) Applicants must furnish official verification from all states in which they are currently licensed. Verification must be sent directly to the board office from the other state.~~

(1) Pursuant to the requirements of 37-12-302, MCA, an application for original license, renewal, examination, temporary permit or reactivation must be made on a form provided by the board and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or legibly hand-written in ink, accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 12, MCA, and rules promulgated thereunder.

(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.

(4) The board shall review fully-completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications that are received and cannot be resolved in a timely or convenient manner shall be returned to the applicant with a statement regarding incomplete portions.

(5) An applicant shall have 60 days to correct deficiencies and to re-submit the application. Failure to resubmit the application shall be treated as a voluntary withdrawal. After voluntary withdrawal, an entirely new application will be required to initiate a new application.

(6) The board shall notify the applicant in writing of the results of its evaluation of the application.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101, et seq., must be made on forms provided by the board and submitted within a reasonable time prior to the date on which the reasonable accommodation is requested.

(8) An application must be received in the board office 21 days in advance of the board's next regularly-scheduled meeting. Applications received after this deadline will be held for consideration at the next regularly-scheduled board meeting.

(9) The following must accompany an application:

(a) official transcripts sent directly from the appropriate educational institution;

(b) verification from the chiropractic college that it has maintained its accreditation from the council on chiropractic education (CCE) during the applicant's entire course of study;

(c) a certified copy of examination results sent directly from the national board of chiropractic examiners (NBCE), parts I and II, including physiotherapy, and part III; and

(d) verification of licensure sent directly from any state in which the applicant is currently licensed.

(10) Effective January 1, 1997, all applicants shall be required to submit evidence of having passed part IV of the NBCE."

Auth: Sec. 37-1-131, 37-12-201, MCA; IMP, Sec. 37-1-131, 37-12-302, 37-12-304, 37-12-305, MCA

REASON: The board proposes the amendments to set forth the application procedure and necessary information for applicants. The proposed rule makes reference to 37-12-302, MCA, wherein licensure qualifications are set forth. The requirement to submit photographs is intended to prevent fraud and provide identification of licensure applicants and licensees. The rule as proposed makes reference to the board's commitment to ensuring access under the Americans with Disabilities Act. The substance of current (1), (2), (3), and (5) are maintained in the proposed rule. Subsection (4) requires clarification that all applicants are judged uniformly by the standards set forth in board law and rule and not in the board's discretion.

"8.12.603 EXAMINATION REQUIREMENTS ~~(1) Examination for licensure shall be made by the board according to the method deemed necessary to test the qualifications of applicants. An oral interview and practical demonstration may be required in addition to the minimum written examination. Part III, clinical competency examination of the national board of chiropractic examiners is required in lieu of the board's written examination.~~

~~(2) The department will keep examination papers on file for such a length of time as may be deemed necessary and/or one year. Those individuals who sat for the examination and were successful or unsuccessful shall be recorded in the minutes and become part of the permanent record.~~

~~(3) The minimum passing score for the examination shall be 75% of the total questions asked. However, if an applicant scores less than 60% on one or two sections of the examination, he is not entitled to licensure but has the option of retaking the one or two sections failed, rather than the full examination.~~

(1) The board accepts as its approved method of examination, parts I & II, including physiotherapy, and part III of the national board of chiropractic examiners (NBCE) examination. In addition, the applicant must pass the state clinical proficiency examination and the state jurisprudence examination. The applicant will not be required to take the state clinical proficiency examination if part IV (clinical proficiency), of the NBCE, has been taken and passed. Effective January 1997, the board will require passage of part IV of the NBCE, and will no longer administer the state clinical proficiency examination.

(2) An applicant scoring less than 60% on any branch of the state examination will be required to retake only that section(s)."

Auth: Sec. 37-1-131, 37-12-201, MCA; IMP, Sec. 37-12-304, MCA

REASON: The language proposed for deletion with regard to examination requirements unnecessarily repeats statutory language; further, the board has discontinued oral interview of its candidates. Subsection (2) is proposed for deletion because retention of examination papers for all licensure boards is mandated by bureau policy. With regard to publishing in the minutes whether an examinee is successful in passing the examination, only the fact that an individual is licensed is public information. The fact that a candidate has failed the examination is not public information. The proposed rule sets forth the board's adoption of the national exam and timetable for phasing out the state exam.

"8.12.604 TEMPORARY PERMIT (1) ~~Upon receipt of a completed application, a temporary permit may be issued at the discretion of the board. All applicants for t~~Temporary permits applicants must show evidence of having completed parts I through III of the NBCE and may be issued a permit under 37-1-305(2), MCA, while waiting to take part IV or the state practical. The permit requires the permit holder to practice

~~must work~~ under the ~~direct~~ on-premises supervision ~~and presence~~ of a chiropractor licensed ~~chiropractor~~ in the state of Montana ~~and must furnish documentation of this supervision and a completed application to the board~~.

(2) will remain the same.

~~(3) A temporary permit does not allow the holder to have a separate office as a sole practitioner, or to practice the profession without supervision of a licensed chiropractor.~~

~~(4)~~ (3) A notarized statement consenting to the above conditions shall be signed by both the supervising licensed chiropractor and the applicant, and filed with the board.

~~(5) Temporary permits will only be in effect until 10 days after the date of the next license examination. No more than two consecutive temporary permits may be issued to an applicant under one application.~~"

Auth: Sec. 37-12-201, 37-1-319, MCA; IMP, Sec. ~~37-12-303~~, 37-1-305, MCA

REASON: This rule is being amended to make clear that the licensed chiropractor is not required to provide direct supervision construed to require that the supervising chiropractor observe the temporary permit holder; rather the rule proposes that the supervising chiropractor be on the premises whenever the temporary permit holder is providing services. Subsection (3) is proposed for deletion because 37-1-305, MCA, sets forth the expiration of a temporary permit. Implementing section 37-12-303, MCA, has been repealed.

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) The board shall send a renewal application form to the licensee's address on file in the board office prior to the renewal deadline. Failure of the licensee to receive a renewal application form in no way releases the licensee from the obligation to renew his or her license in a timely manner.

~~(1)~~ (2) ~~The~~ All licensees ~~must~~ shall present evidence, satisfactory to the board, that they have in the year preceding the application for renewal, attended at least 12 hours of board-approved continuing education. ~~Failure for a licensee to comply with this rule will constitute reason for denial of license renewal.~~

(3) Licensees may renew their licenses for a period of one year after the expiration date of the license by paying a late fee and by submitting documentation of the appropriate continuing education requirements. A license that is not renewed within one year of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing the special purposes examination for chiropractic (SPEC) administered by the national board of chiropractic examiners and paying the appropriate fees.

~~(2)~~ (4) The board shall approve on a case-by-case basis all ~~C~~continuing education ~~courses recognized by the board pertaining to the practice of chiropractic may include those sponsored by CCE approved chiropractic colleges.~~ Pprograms that it determines in its discretion to be related to the practice

of chiropractic ~~will be approved by the board on a per case basis~~.

~~(3) In order to further protect the public health and to facilitate the administration of the act since amended, the board has formulated the following rules:~~

~~(a) The number of lectures employed for the educational courses shall not be less than sufficient to conform to the requirements of this act, and the subject matter of lectures shall be germane to the practice of chiropractic.~~

(b) and (c) will remain the same, but will be renumbered (5) and (6).

~~(d) Excuses for non-attendance shall be issued on the following conditions only:~~

~~(i) Postgraduate work, as defined by the board, in an accredited chiropractic college.~~

~~(ii) Sickness or such other circumstances which the board may determine not inconsistent with this act.~~

~~(4)~~ (7) ~~It shall be the duty of each~~ All licensees ~~to keep~~ shall notify the department ~~informed~~ of any change in ~~his~~ mailing addresses.

~~(5) Licensees who have not renewed by October 1 of each year shall pay a late renewal fee.~~

~~(6) An inactive status annual renewal fee is due on or before September 1 of each year. The late fee provided in subsection (5) is applicable to inactive practitioners.~~"

Auth: Sec. 37-1-134, 37-12-201, 37-12-307, 37-1-141, 37-1-319, MCA; IMP, Sec. 37-1-134, 37-1-306, 37-12-307, MCA

REASON: Whereas a licensee was previously allowed a period of time after the expiration date of a license before a late fee was necessary, the amendments in (1) and (2) modify the renewal scheme to be consistent with the statutory mandates of 37-12-307, MCA, and the department rule on renewal of licenses, ARM 8.2.208. Proposed (3) addresses the applicant who has not renewed and is presumed to be out of the practice. By this rule, the board has selected one year as the period of time after which a practitioner must demonstrate continuing competency by retesting. The amendments regarding continuing education requirements primarily delete the waiver for failing to obtain the necessary credits and secondarily addresses grammar and style. Language in current (2) and (3) regarding approval of continuing education is proposed for deletion because of redundancy. The substance of (6) is being moved to ARM 8.12.611 Inactive Status.

"8.12.611 INACTIVE STATUS ~~(1) "Inactive practitioner" for purposes of these rules shall mean a practitioner who is not practicing chiropractic in the state of Montana and has applied for and been granted inactive status.~~

~~(2) Inactive practitioners do not have to meet continuing education requirements under 37-12-307, MCA and ARM 8.12.606.~~

~~(3) Applicants requesting inactive status must certify their intention to the board on a form prescribed by the board.~~

~~(4) Inactive practitioners intending to resume practice must first satisfy the following requirements for reinstatement:~~

~~(a) submit written application to the board on forms provided by the board;~~

~~(b) submit proof of completion of 12 hours of approved continuing education in the year preceding reinstatement; and~~

~~(c) submit a fee of $150.00 to be paid with the request for reinstatement.~~

(1) A licensed chiropractor who wishes to retain a license but who will not be practicing chiropractic may obtain an inactive status license upon submission of an application. An individual licensed on inactive status may not practice chiropractic during the period in which he or she remains on inactive status.

(2) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application, payment of the renewal fee for the year in question, and evidence of one of the following:

(a) during each year of inactive status in this state, full-time (no less than 1,500 hours per year) practice of chiropractic under a license in good standing in another state that requires completion of continuing education substantially equivalent to that required under these rules; or

(b) that the applicant has received in the 24 months preceding the application for reactivation, 12 continuing education credits for every year that the license has remained inactive beyond two years; or

(c) passage of the special purposes examination for chiropractic."

Auth: Sec. 37-1-131, ~~37-1-134,~~ 37-1-319, 37-12-201, 37-12-307, MCA; IMP, Sec. ~~37-1-134,~~ 37-1-319, 37-12-201, 37-12-307, MCA

REASON: The proposed amendments provide more detail in the procedures for instituting inactive status and reactivating a license. The amendment primarily addresses the methods of measuring competency upon application for reactivation by requiring a proportionate number of continuing education requirements to the length of time the practitioner remained inactive and by allowing the option of taking the examination. Similar language will be used for other boards to promote uniformity in the Professional & Occupational Licensing Bureau. Authorizing and implementing statute 37-1-134, MCA, provides that fees shall be commensurate with costs and is herein stricken, as the reference to fees in (4)(c) is more properly set forth under ARM 8.12.615 Fee Schedule.

"8.12.615 FEE SCHEDULE

(1) Application fee ~~($25 shall be retained for administrative costs)~~	$125~~.00~~
(2) Re-examination fee per section (written/practical)	50~~.00~~
(3) Renewal fee	
(a) Active license	100~~.00~~
(b) Inactive license	50~~.00~~
(4) Late renewal fee	35~~.00~~
(5) Original license fee	75~~.00~~
(6) Temporary permit	25~~.00~~

(7) Application for impairment evaluators ~~125.00~~ 100
(8) Certificate for impairment evaluators ~~75.00~~ 50
(9) Renewal of certificate for impairment evaluators ~~50.00~~
(10) Application fee for student/intern ~~25.00~~
(11) Application fee for practitioners proposing to serve as preceptors ~~25.00~~
(12) All fees are non-refundable."

Auth: Sec. 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-134, 37-12-201, 37-12-302, 37-12-303, 37-12-304, 37-12-307, MCA

REASON: All fees are non-refundable because fees must be commensurate with program area costs and the fees must cover processing time. The fee for impairment evaluator application and certificate are proposed for reduction to help lower excess cash balance.

"8.12.901 APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT EVALUATORS (1) through (3)(c) will remain the same.

(4) Diplomates of the American ~~chiropractic~~ board of chiropractic orthopedists (~~DACBO~~ DABCO) in practice more than five ~~(5)~~ years are exempt from the educational and training requirements.

(5) and (6) will remain the same."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

REASON: The proposed amendments to (4) are necessary to correct typographical errors only and to strike (5) because it is not necessary to repeat the number after the word.

"8.12.902 MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS IMPAIRMENT EVALUATORS (1) and (1)(a) will remain the same.

(b) 12 hours of education in which education materials have been compiled, written, or prepared by a medical doctor ~~who specializes~~ specializing in impairment rating."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

REASON: This amendment is being proposed to ensure the educational materials are compiled, written, or prepared by a medical doctor for protection of the public.

3. The Board is proposing to repeal ARM 8.12.605 (unnecessarily repeats 37-1-304, MCA); ARM 8.12.607 (now found in new rule I); ARM 8.12.609 (unnecessarily repeats 37-1-314, MCA); ARM 8.12.612 (unnecessarily repeats 37-1-307 and 37-1-312, MCA); ARM 8.12.613 (implementing section 37-12-321, MCA, has been repealed; rule engrafts additional requirements upon the statute and exceeds statutory authority); ARM 8.12.801 through 8.12.804 (rules unnecessarily repeat or are in conflict with Title 37 chapter 1, Uniform Licensing Act 1995). The rules proposed for repeal are located at pages 8-359, 8-360, 8-362 through 8-364, 8-371, and 8-372, Administrative Rules of Montana. The authority sections are 37-1-131, 37-1-136, 37-12-201, 37-12-322, MCA, and the implementing sections are 37-1-136, 37-12-321, 37-12-322, 37-12-323, MCA.

4. The proposed new rule will read as follows:

"I. UNPROFESSIONAL CONDUCT In addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, and for the purpose of implementing the provisions of Title 37, chapter 1, MCA, the board defines unprofessional conduct as follows:

(1) falsifying, altering or making incorrect essential entries or failing to make essential entries of client records;

(2) committing a fraudulent insurance act as defined in 33-1-1202, MCA;

(3) using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;

(4) practicing the profession under a false name or name other than the name under which the license is held;

(5) impersonating any licensee or representing oneself as a licensee for which one has no current license;

(6) charging a client or a third-party payor for a service not performed, or submitting an account or charge for services that are false or misleading (does not apply to charging for an unkept appointment);

(7) filing a complaint with, or providing information to the board which the licensee knows or ought to know is false or misleading (does not apply to any filing of complaint or providing information to the board when done in good faith);

(8) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 12, MCA, or rule promulgated thereunder, or any order of the board;

(9) violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

(10) being convicted of a misdemeanor or any felony involving the use, consumption or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;

(11) using any dangerous drug or controlled substance illegally while providing professional services;

(12) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(13) maintaining an unsanitary or unsafe office or practicing under unsanitary or unsafe conditions;

(14) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;

(15) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience or competence;

(16) maintaining a relationship with a client that is likely to impair the licensee's professional judgment or increase the risk of client exploitation including providing services to employees, supervisees, close colleagues or relatives;

(17) exercising influence on or control over a client, including the promotion or the sale of services, goods, property, or drugs for the financial gain of the licensee or a third party;

(18) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

(19) offering, giving, or receiving commissions, rebates, or other forms of remuneration for the referral of clients. Notwithstanding this provision, a licensee may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on the licensee's behalf by such agent, including compensation for referrals of clients identified through such services on a per client basis;

(20) accepting employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of the licensee's employment by, or relationship with, such client or former client;

(21) failing to advise the client, before performing any service or providing any product, of the charge for a service or product or the fee schedule or other basis for which the proposed changes shall be determined;

(22) charging a fee that is clearly excessive in relation to the service or product for which it is charged;

(23) failing to make or retain records for work performed or services provided. Records may be destroyed 10 years after the end of the client relationship. In the case of a minor, the time period is 10 years after their eighteenth birthday;

(24) failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;

(25) discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services;

(26) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;

(27) accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation or who is not licensed or authorized to operate a professional practice or business;

(28) failing to cooperate with a board inspection or investigation in any material respect;

(29) failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(30) failing to obtain informed consent from the patient or the patient's representative prior to providing any therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related care;

(31) employing a nontraditional or experimental treatment or diagnostic process without informed consent from the patient or the patient's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the patient or public;

(32) guaranteeing that a cure will result from the performance of medical services;

(33) ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;

(34) prescribing, dispensing or furnishing any prescription drug;

(35) notwithstanding any provision regarding privileged communications, failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials in circumstances where the licensee becomes aware, during the course of providing or supervising professional services, that a client intends or plans to inflict serious bodily harm to another person;

(36) notwithstanding any provision regarding privileged communications, failing to take reasonable steps to protect a client in circumstances where a licensee becomes aware, during the course of providing or supervising professional services, that a client intends or plans to inflict bodily harm to himself or herself;

(37) failing to provide to a patient, patient's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the patient which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;

(38) engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in 45-12-101, MCA, with a client during a period of time in which a professional relationship exists or for up to 12 months after the relationship has terminated;

(39) failing to account for funds received in connection with any services rendered or to be rendered;

(40) breaching any contract with any person contracting for services of the license holder, which breach results in a material injury to another person."

Auth: Sec. 37-1-319, 37-1-131, MCA; IMP, Sec. 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, MCA

REASON: The proposed new rule replaces an existing unprofessional conduct rule in favor of broader, more accurate and precise grounds of unprofessional conduct. The proposed new rule utilizes uniform language that will be applied to other boards in the Professional & Occupational Licensing Bureau to promote uniformity and efficiency.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of

Chiropractors, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., May 23, 1996.

6. Colleen A. Graham, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
MARVIN HARRIS, PRESIDENT

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 15, 1996.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to sanitarians	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO SANITARIANS

TO: All Interested Persons:

1. On March 7, 1996, the Board of Sanitarians published a notice of proposed amendment, repeal and adoption of rules pertaining to sanitarians at page 626, 1996 Montana Administrative Register, issue number 5.

2. The Board received a sufficient number of requests from qualifying individuals for a public hearing on the proposed amendment, repeal and adoption. The Board will hold a hearing on May 17, 1996, at 10:00 a.m. in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department no later than 5:00 p.m., May 7, 1996, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Sanitarians, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Helena Lee.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Helena Lee, Board of Sanitarians, 111 N. Jackson, P. O. Box 200513, Helena, Montana 59620-0513, and must be received no later than May 23, 1996 at 5:00 p.m.

5. Colleen A. Graham, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS
MELISSA TUEMMLER, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 1996.

BEFORE THE BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to dollar amounts to which consumer loan rates are to be applied	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 25, 1996, the Banking and Financial Institutions Division proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
~~Section~~ 32-5-201(4), MCA	$1,000~~.00~~	~~$1,600.00~~ 1,800
~~Section~~ 32-5-306(7), MCA	$ 300~~.00~~	$ ~~480.00~~" 540

Auth: Sec. ~~32-5-104~~, MCA; IMP, Sec. 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA

REASON: Section 32-5-104, MCA, ties certain dollar amounts listed in Title 32, chapter 5 to the U.S. Consumer Price Index. Changes in the CPI may trigger changes in the dollar amounts. The changes are accomplished by administrative rule. The CPI has changed enough in the past two years to require an adjustment. The amounts currently listed in ARM 8.80.307 will be increased by 20% by the proposed amendment.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Banking and Financial Institutions Division, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., May 23, 1996.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Banking and Financial Institutions Division, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or

by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., May 23, 1996.

5. If the Division receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4 based on the 45 licensees in Montana.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHINSON, COMMISSIONER
OF BANKING AND FINANCIAL
INSTITUTIONS

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 15, 1996.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed repeal of rules pertaining to state grants to counties for district court assistance	)))))	NOTICE OF PROPOSED REPEAL OF ARM 8.83.401, 8.83.402, 8.83.403 and 8.83.404 PERTAINING TO STATE GRANTS TO COUNTIES FOR DISTRICT COURT ASSISTANCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 25, 1996, the Local Government Assistance Division proposes to repeal ARM 8.83.401, 8.83.402, 8.83.403 and 8.83.404, which are located at pages 8-2481 and 8-2482, Administrative Rules of Montana. The authority section is 7-6-2352, MCA, and the implementing section is 7-6-2352, MCA. The reason for the proposed repeals is that the 1993 Legislature transferred authority to administer the district court grant program established by section 7-6-2353, MCA, from the Department of Commerce to the Supreme Court Administrator (Sec. 2, Ch. 330, L. 1993).

2. Interested persons may submit their data, views or arguments concerning the proposed repeals in writing to the Local Government Assistance Division, 1424 - 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., May 23, 1996.

3. If a person who is directly affected by the proposed repeals wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., May 23, 1996.

4. If the Board receives requests for a public hearing on the proposed repeals from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed repeals, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25.

LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 15, 1996.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO ARM 10.57.301 ENDORSEMENT INFORMATION

To: All Interested Persons

1. On May 23, 1996, at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education Offices, 2500 Broadway, Helena, in the matter of the proposed amendment to 10.57.301 Endorsement Information.

2. The rule as proposed to be amended provides as follows:

10.57.301 ENDORSEMENT INFORMATION

(1) through (5) will remain the same.

(6) Both elementary and secondary training to include student teaching or appropriate waiver are required for endorsement in any approved K-12 endorsement area.

(a) A class 1 or 2 certificate may be endorsed in special education K-12 with program preparation at the elementary or secondary levels, or a balanced K-12 program of comparable preparation.

(7) through (10) remain the same.

AUTH: Sec. 20-2-121 MCA IMP: Sec. 20-4-102 MCA

3. The board's proposal permits basic educational background and student teaching experience (or authorized waiver) at the levels endorsed. This does not create a "specialist". Montana does not consider that an extended major, such as English, chemistry or elementary education, creates a specialist. By our standards for preparing special education teachers, Montana seeks the "generalist" in special education to meet local district needs.

4. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than May 23, 1996.

5. Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, has been designated to preside over and conduct the hearing.

Wayne Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/9/96.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 12.3.107, 12.3.108, 12.3.114, 12.3.207, and 12.3.401 all relating to the issuance of hunting, fishing and trapping licenses.	)))))))	NOTICE OF PROPOSED REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) propose to repeal ARM 12.3.107, 12.3.108, 12.3.114, 12.3.207 and 12.3.401 relating to the issuance of hunting, fishing, and trapping licenses. The commission and department are proposing to repeal these rules because they either repeat or paraphrase statutory language, are repeated in other rules or should be addressed as a department internal personnel policy.

2. Rule 12.3.107, a rule proposed to be repealed, is on page 12-106 of the Administrative Rules of Montana.

AUTH: 8-2-706, MCA IMP: 8-2-706, MCA

Rule 12.3.108, a rule proposed to be repealed, is on page 12-106 of the Administrative Rules of Montana.

AUTH: 87-1-304, MCA IMP: 87-2-702, MCA

Rule 12.3.114, a rule proposed to be repealed, is on page 12-111 of the Administrative Rules of Montana.

AUTH: 87-2-705, MCA IMP: 87-2-705, MCA

Rule 12.3.207, a rule proposed to be repealed, is on page 12-121 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA IMP: 87-2-901, MCA
87-2-901

Rule 12.3.401, a rule proposed to be repealed, is on page 12-127 of the Administrative Rules of Montana.

AUTH: 87-2-104, MCA IMP: 87-2-104, MCA

3. Rationale: The repeal of the rules as proposed is part of the department's and commission's efforts to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

ARM 12.3.107, Antelope Licenses for Disabled Persons, is proposed for repeal because it only paraphrases statutory language, with one exception, and does that poorly. The rule does define which hunting districts are available to disabled persons for their preference; however, this is also done in the annual hunting regulations of the commission which is sufficient. This is a department and commission rule.

ARM 12.3.108, Prerequisites for Special Elk Permits, is proposed for repeal because it is repeated in ARM 12.2.111(2) and 12.3.113(3). This is a commission rule.

ARM 12.3.114, Antlerless Elk License, is proposed for repeal because the rule language is also contained within ARM 12.3.113. This is a department rule.

ARM 12.3.207, Department Procedures, is proposed for repeal because it only establishes internal operating procedures of the department in processing applications to be a license agent. It is not an appropriate subject for a rule but is appropriate as an internal personnel policy. This is a department rule

ARM 12.3.401, Fee for Duplicate License, is proposed for repeal because it is duplicated in ARM 12.3.403. This is a department rule.

4. Interested persons may present their data, views or arguments concerning the proposed repeals in writing no later than May 23, 1996, to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

5. If a person who is directly affected by the proposed repeals wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than May 23, 1996.

6. If the agency receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of license applicants in Montana each year.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION AND DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of Fish, Wildlife & Parks Commission and Director of Department of Fish Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of proposed amendment of ARM 12.4.102 relating to the stream access definitions in rules.	NOTICE OF PROPOSED AMENDMENT OF RULE NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.4.102. The amendment will eliminate definitions already found in the definitions for the stream access statutes, 23-2-301, MCA.

2. The rule proposed to be amended provides as follows:

12.4.102 DEFINITIONS For the purposes of this subchapter the definitions found in 23-2-301, MCA, and the following definitions apply:

(1) "Adversely affecting" means significantly and harmfully altering the quality or quantity of fish or wildlife populations.

~~(2) "Class I water" means any river or stream which:~~

~~(a) lies within the officially recorded federal government survey meander lines thereof;~~

~~(b) flows over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;~~

~~(c) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership; or~~

~~(d) are or have been capable of supporting the following commercial activities: Log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation or the transportation of merchandise as these activities have been defined by published judicial opion as of April 19, 1985.~~

~~(3) "Class II water" means any river or stream that is not a class I water.~~

(42) "Damage" means physical harm to structures, equipment, agricultural production, or stream beds or banks up to the ordinary high-water mark or to land beyond the ordinary high water mark.

(53) "Degradation" means physical harm to the stream banks and beds that results in continuous, long-term violations of state or federal water quality standards.

(64) "Disrupting or altering" means causing modification of an area resulting in a measurable harmful reduction in biotic community or communities.

~~(7) "Ordinary high water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A floodplain adjacent to surface waters is not considered to be within the surface waters' ordinary high water mark.~~

(~~8~~5) "Person" means an individual, firm, corporation, association, partnership, municipality, or local, state, or federal governmental agency.

~~(9) "Recreational use" means fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft or craft propelled by oar or paddle, and other water related pleasure activities.~~

AUTH: 87-1-303, MCA
IMP: 23-2-302, MCA

3. Rationale: The amendment of the rules as proposed is part of the commission's effort to reduce rules by deleting sections that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

The rules of the commission establishing procedures for limiting or restricting recreational use of certain streams or rivers pursuant to 23-2-302(5), MCA, use some definitions that repeat statutory definitions. The commission proposes to incorporate the statutory definitions and then eliminate the definitions repeated in ARM 12.4.102.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing no later than May 23, 1996, to Bob Lane, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 596201-0701.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Bob Lane, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 596201-0701. A written request for hearing must be received no later than May 23, 1996.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of persons who fish and recreate in stream and rivers in the state plus the number of riparian landowners.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION

Stan Meyer, Chairman

Certified to the Secretary of State on April 15, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 12.2.304, 12.5.101, 12.5.401 and 12.10.102, and the amendments of ARM 12.5.102 and 12.10.103 relating to the natural resource policies and public participation.	)))))))	NOTICE OF PROPOSED REPEAL AND AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) proposes to repeal a rule addressing coal resources, ARM 12.5.101, and to amend a rule on commission policy on natural resource development, ARM 12.5.102. The commission and the Department of Fish, Wildlife & Parks (department) propose to repeal a rule addressing oil and gas leasing on department property, ARM 12.5.401. The department proposes to repeal a rule addressing public participation in contracts through bidding, ARM 12.2.304, and to repeal ARM 12.10.102 and amend ARM 12.10.103, both addressing applications for shooting range grants.

2. The rules proposed to be repealed are as follows:

ARM 12.2.304, a rule proposed to be repealed, is on page 12-21 of the Administrative Rules of Montana.

AUTH: 2-3-103, MCA IMP: 2-3-103, MCA

ARM 12.5.101, a rule proposed to be repealed, is on page 12-203 of the Administrative Rules of Montana.

AUTH: 87-1-301,MCA IMP: 87-1-201, MCA
87-1-301, MCA

ARM 12.5.401, a rule proposed to be repealed, is on page 12-217 of the Administrative Rules of Montana.

AUTH: 23-1-106, MCA IMP: 23-1-102, MCA
87-1-301, MCA 87-1-209, MCA
87-1-301, MCA

ARM 12.10.102, a rule proposed to be repealed, is on page 12-1007 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA IMP: 87-1-201, MCA
87-2-105, MCA

3. The rules as proposed to be amended provide as follows:

12.5.102 NATURAL RESOURCES DEVELOPMENT POLICY ~~(1) The Montana fish and game commission recognizes the nation's need for an expanded and continuing supply of natural resources and recognizes the economic opportunities associated with the development of these resources. The commission also recognizes the variety of environmental and ecological problems that have in the past been associated with the extraction and development of Montana's natural resources. It is increasingly apparent that Montana is entering a period of greatly accelerated development. Therefore, the commission adopts the policy of supporting the orderly and completely planned development of any natural resource oriented industry that considers and respects all aspects of an area's ecology and environmental quality.~~

~~(2) The commission supports the surface mining for coal and bentonite, the dredge mining for gold, and the drilling for oil when that development is accompanied by mandatory reclamation dedicated to restoring the surface of the land to the highest possible level of productivity. To this end, the commission will work cooperatively with any and all companies to ensure that new developing mineral and oil extraction complexes are planned to have the least possible disruption of an area's present fish and wildlife ecology and that this development be designed to ensure the maintenance of the highest environmental quality technologically possible. Recognizing the complete lack of environmental protection now associated with present mineral and oil exploration and mining claim maintenance procedures, the commission supports efforts to make mineral exploration, including oil and gas, more compatible with environmental quality maintenance.~~

~~(3) The continuing extension of logging with its associated excessive roading into Montana's dwindling wild areas is causing severe management problems in several species of Montana wildlife, most notably elk and cutthroat trout. It is proceeding today on public land and interspersed private lands with practically a total disregard for the wildlife ecology of the areas it affects.~~

~~(4) The commission recognizes the need of the nation for forest products; however, it also recognizes that logging and roading must be less disruptive if our wildlife populations are to prosper. To accomplish true multiple use of Montana's forest lands, the commission will work cooperatively with all forest land managers, public and private, to ensure that existing wildlife values are respected. Since the commission is the official recreation agency of Montana, it feels an additional responsibility to assess the true value of forest roads that are partially financed as general access roads with recreation benefits.~~

~~(5) The development of Montana's water resources has long been an area of concern and involvement by the commission, and participation in these activities by the commission is better today than it ever has been. However, the need for early ecological planning in many aspects of water development and management is still very apparently lacking. It is therefore the policy of the commission to work for total involvement in~~

~~all phases of water resource planning and development, beginning with the recognition of fish, wildlife and recreation as legal beneficial uses of water without diversion.~~

~~(6) It is obvious that this involvement on the part of the commission is essential to ensure the stability of the habitat or the environments that produce our fish and wildlife resource. It is further apparent that this involvement is improbable within our present system of financing. Therefore this commission urges the developers and extractors of Montana's natural resources to recognize their responsibility to the land that is the source of their products, and to those who would use them after us, and support this policy of cooperation both morally and financially.~~

~~(7) In conjunction with this policy, the commission would like to recognize the progress achieved with the highway construction program in Montana. As a result of the Stream Preservation Acts of 1963 and 1965, the highways continue to be built and trout stream values maintained. This program is growing now to the point where fish, wildlife and recreation values may be enhanced as a result of highway construction.~~

(1) The Montana fish, wildlife & parks commission recognizes the nation's need for an expanded and continuing supply of natural resources and recognizes the economic opportunities associated with the development of these resources. The commission also recognizes the importance of such development being orderly and planned. The commission believes that development in Montana must incorporate fish and wildlife values, both economic and intrinsic, through recognition of the importance of habitat, reclamation, sustainable development with protection for wildlife, maintaining high quality of water resources, and involving the many different publics who have a vital stake in Montana's fish and wildlife resource.

AUTH: 87-1-301, MCA IMP: 87-1-201, MCA
87-1-301, MCA

12.10.103 REQUIRED INFORMATION FOR GRANT APPLICATIONS

(1) To apply for a shooting range development grant, an applicant must prepare and submit a completed application to the department's conservation education division in Helena. For questions and assistance call (406) 444-4046.

(2) Applications are reviewed throughout the biennium as long as funds are available.

(1) remains the same but is renumbered as (3).

AUTH: 87-1-201, MCA IMP: 87-1-201, MCA
87-2-105, MCA

4. Rationale: The repeal of the rules as proposed is part of the department's and commission's efforts to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

ARM 12.2.304 is proposed for repeal because it only repeats what is required by statute. The rule states the public's

opportunity to participate in the awarding of contracts is through the invitation to bid. This is a department rule.

ARM 12.5.101, Coal Resource Statement, is proposed for repeal on the grounds it is no longer necessary because it is a rule advocating policy positions rather than a substantive rule and because the concerns precipitating that advocacy have now been addressed in state and federal mining reclamation statutes and other laws. Adopted on December 31, 1972, this rule is now out-of-date. It contains references to Congressional action which has occurred. It calls for a moratorium on coal mining for reasons that are now moot. It calls for state statutory enactments which have since occurred. Generally, the public policies advocated in the rule have now been enacted as public policy and law. This is a commission rule.

ARM 12.5.102 is proposed for amendment as much of the rule is out-of-date. However, the policy basis for this rule remains sound. The specifics of the existing rule reflect state and federal laws and regulations that have since undergone significant changes in their approach to ecological values. The ecological values called for by this rule have been incorporated in public policy and law in the areas addressed: mining, logging, and water resources. In addition, natural resource extraction has since diminished in Montana and the concerns addressed by this rule have been generally replaced by different ones. Complete elimination of the rule is not appropriate, given the continued influence of logging, mining and water use on the fish and wildlife resource of the state. Therefore, the proposed revision is meant to capture the policy addressed by the commission in 1972, but remodel it to reflect the fundamental changes that have occurred in the interim. This is a commission rule.

ARM 12.5.401 is proposed for repeal because it is no longer needed. The department signed a memorandum of understanding (MOU) with the department of natural resources and conservation (DNRC), then the department of state lands, on August 12, 1993, which provides for DNRC's administration of all oil or gas leases on department administered lands. The MOU spells out the criteria to be used for such leases. For example, department biologists must be consulted. The MOU and its provisions make this rule superfluous. This is a department and commission rule.

ARM 12.10.102 is proposed for repeal and ARM 12.10.103 is proposed to be amended to shorten and combine two rules on shooting range development grants. This is a department rule.

5. Interested persons may present their data, views or arguments concerning the proposed rules in writing no later than May 23, 1996, to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

6. If a person who is directly affected by the proposed rules wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than May 23, 1996.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of persons in Montana interested in natural resource issues.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION AND DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of Fish, Wildlife & Parks Commission and Director of Department of Fish Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of 12.6.1604, 12.6.1704, 12.6.1902, 12.6.1905, and 12.6.2004; and the amendments of 12.6.1304, 12.6.1601, 12.6.1701, 12.6.1802, 12.6.1901, and 12.6.1903 all relating to the regulation of roadside zoos, game bird farms, fur farms, migratory game bird avicultural permits, and tattooing of certain captive predators.	NOTICE OF PROPOSED REPEAL AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 31, 1996, the Montana Department of Fish, Wildlife and Parks proposes to repeal and amend the above-referenced rules. The department is proposing to repeal and amend these rules because the rules or parts of the rules either repeat or paraphrase statutory language or because the rules or parts of the rules are covered by other rules.

2. The rules proposed to be repealed are as follows:

ARM 12.6.1604, a rule proposed to be repealed, is on page 12-346 of the Administrative Rules of Montana.

AUTH: 87-4-913, MCA IMP: 87-4-912, MCA

ARM 12.6.1704, a rule proposed to be repealed, is on page 12-348 of the Administrative Rules of Montana.

AUTH: 87-4-1012, MCA IMP: 87-4-1011, MCA

ARM 12.6.1902, a rule proposed to be repealed, is on page 12-351 of the Administrative Rules of Montana.

AUTH: 87-1-231 and 87-1-234, MCA
IMP: 87-1-231 and 87-1-234, MCA

ARM 12.6.1905, a rule proposed to be repealed, is on page 12-352 of the Administrative Rules of Montana.

AUTH: 87-1-231 and 87-1-234, MCA
IMP: 87-1-231 and 87-1-234, MCA

ARM 12.6.2004, a rule proposed to be repealed, is on page 12-356 of the Administrative Rules of Montana.

AUTH: 87-5-605, MCA IMP: 87-5-606, MCA

3. The rules as proposed to be amended provide as follows:

12.6.1304 TREATMENT AND SANITATION (1) All animals retained at a roadside zoo shall be handled in a humane manner and kept free from parasites, sickness or disease, and when afflicted or unsightly shall be removed from public display by the owner, and immediately given professional medical attention, or be destroyed in a humane manner.

~~(2) Drinking fountains and other receptacles shall be kept clean and in a sanitary condition.~~

(3) and (4) remain the same, but are renumbered (2) and (3).

AUTH: 87-4-802, MCA IMP: 87-4-802, MCA

12.6.1601 APPLICATION FOR AND RENEWAL OF GAME BIRD FARM LICENSE

(1) through (5) remain the same.

(6) The department may not renew a game bird farm license until the licensee has submitted the report described by section 87-4-912, MCA, on forms provided by the department.

~~(7) If a person is issued more than one license under sections 87-4-406 -- 87-4-423, sections 87-4-901 -- 87-4-916, and sections 87-4-1001 -- 87-4-1013, MCA, the total assessment for initial fees or for renewal fees for all licenses issued to such person may not exceed the amount of the largest individual license fee.~~

~~(8) No initial license fee shall be assessed against any person who held a game bird farm license on October 1, 1983, unless there is a break in licensing of more than 1 year.~~

AUTH: 87-4-905 and 87-4-913, MCA
IMP: 87-4-904, 87-4-905, and 87-4-912, MCA

12.6.1701 APPLICATION FOR AND RENEWAL OF FUR FARM LICENSE

(1) through (5) remain the same.

(6) The department may not renew a fur farm license until the licensee has submitted the report described by section 87-4-1011, MCA, on forms provided by the department.

~~(7) If a person is issued more than one license under sections 87-4-406 -- 87-4-423, sections 87-4-901 -- 87-4-916, and sections 87-4-1001 -- 87-4-1013, MCA, the total assessment for initial fees or for renewal fees for all licenses issued to such person may not exceed the amount of the largest individual license fee.~~

~~(8) No initial license fee shall be assessed against any person who held a fur farm license on October 1, 1983, unless there is a break in licensing of more than 1 year.~~

AUTH: 87-4-1004 and 87-4-1012, MCA
IMP: 87-4-1003, 87-4-1004, 87-4-1011, MCA

12.6.1802 AVICULTURAL PERMITS ~~(1) The department may issue an avicultural permit for taking, capturing and possessing specified migratory game birds for the purpose of propagation.~~

(2) through (4) remain the same, but are renumbered (1) through (3).

~~(5) All migratory game birds or eggs taken under an aviculture permit remain the property of the state, must be kept at a facility within Montana, and may be disposed of only as permitted by the department.~~

~~(6) Progeny of migratory game birds taken under an aviculture permit become the private property of the permit holder who propagates the birds, and the owner may sell or transfer the birds as private property subject to applicable state and federal laws and regulations.~~

AUTH: 87-2-807, MCA IMP: 87-2-807, MCA

12.6.1901 DEFINITIONS For purposes of this rule the following definitions apply:

(1) "Bear" means a member of any species of the genus Ursus.

(2) "Coyote" means a member of the species Canis latrans, including any canine hybrid which is one-half or more coyote.

(3) "Mountain lion" means a member of the species Felis concolour.

~~(4) "Tattoo" means a permanent tattoo or other permanent identification approved by the department.~~

(5) and (6) remain the same, but are renumbered (4) and (5).

AUTH: 87-1-231, 87-1-234, MCA
IMP: 87-1-231, 87-1-234, MCA

12.6.1903 TATTOOING (1) and (2) remain the same.

~~(3) No tattoo is required by this subsection with respect to an animal subject to a permanent individual identification process by a state or federal agency.~~

(4) and (5) remain the same, but are renumbered (3) and (4).

AUTH: 87-1-231, 87-1-234, MCA IMP: 87-1-231, 87-1-234, MCA

4. Rationale: The repeal of the rules as proposed is part of the department's effort to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

ARM 12.6.1304 is proposed to be amended by repealing subsection (2). This subsection requires that drinking fountains at roadside zoos should be kept clean. This regulation pertains to animal drinking fountains because the department does not regulate human health and sanitation facilities. Subsection (2) can be eliminated because the requirements of subsection (3) adequately address the sanitation of cages and enclosures, and require that they be cleaned at

least once a day.

ARM 12.6.1601 is proposed to be amended and ARM 12.6.1604 is proposed to be repealed. These rules regulate game bird farms. Subsection (6) of ARM 12.6.1601 will be amended to include the words "on forms provided by the department" which will eliminate the necessity of ARM 12.6.1604. Subsection (7) of ARM 12.6.1601 is a repeat of the statute found at 87-1-606, MCA. Subsection (8) of ARM 12.6.1601 is essentially a repetition of subsection (5) which provides that a license which has expired for more than one year will be considered a new application and an initial license fee will be required.

ARM 12.6.1701 is proposed to be amended and ARM 12.6.1704 is proposed to be repealed. These rules regulate fur farms. Subsection (6) of ARM 12.6.1701 will be amended to include the words "on forms provided by the department" which will eliminate the necessity of rule 12.6.1704. Subsection (7) of ARM 12.6.1701 is a repeat of the statute found at section 87-1-606, MCA. Subsection (8) of ARM 12.6.1701 is essentially a repetition of subsection (5) which provides that a license which has expired for more than one year will be considered a new application and an initial license fee will be required.

ARM 12.6.1802 is proposed to be amended because subsection (1), (5) and (6) directly repeat statutory language and are unnecessary for the purposes of this rule.

ARM 12.6.1901 is proposed to be amended because subsection (4) is a direct repetition of statutory language and is therefore unnecessary in the rules.

ARM 12.6.1902 is proposed to be repealed because the entire rule repeats statutory language found in 87-1-231, MCA, and the rule is therefore unnecessary.

ARM 12.6.1903 is proposed to be amended because subsection (3) repeats statutory language and is therefore unnecessary in the rules.

ARM 12.6.1905 is proposed to be repealed because the entire rule is a repeat of 87-1-234, MCA, and is therefore unnecessary as a separate rule.

ARM 12.6.2004 is proposed to be repealed because the rule repeats statutory or constitutional language and is therefore unnecessary as a rule.

5. Interested persons may present their data, views or arguments concerning the proposed rules in writing no later than May 23, 1996, to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

6. If a person who is directly affected by the proposed

rules wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than May 23, 1996.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of license or permit holders plus the number of persons interested in the regulation of captive wild animals and birds.

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director

Certified to the Secretary of State on April 15, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 12.7.401 and 12.7.1101 through 12.7.1103, and the amendments of ARM 12.7.1104, 12.7.1106 and 12.7.1112 relating to fish ladders and the river restoration program.	NOTICE OF PROPOSED REPEAL AND AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) and the Department of Fish Wildlife & Parks (department) propose to repeal ARM 12.7.401 addressing fish ladder requirements; and, the department proposes to repeal ARM 12.7.1101 through 12.7.1103 and to amend ARM 12.7.1104, 12.7.1106 and 12.7.1112, all relating to the river restoration project.

2. The rules proposed to be repealed are as follows:

ARM 12.7.401, a rule proposed to be repealed, is on page 12-411 of the Administrative Rules of Montana.

AUTH: 2-4-201, 87-1-201 and 87-1-301, MCA
IMP: 87-1-222, MCA

ARM 12.7.1101, a rule proposed to be repealed, is on page 12-443 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

ARM 12.7.1102, a rule proposed to be repealed, is on page 12-443 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

ARM 12.7.1103, a rule proposed to be repealed, is on page 12-443 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

3. The rules as proposed to be amended provide as follows:

12.7.1104 PROJECT APPLICATION (1) Application for program funding must be submitted on forms supplied by the department. ~~Completed applications must be submitted to the fisheries division at one of the department regional headquarters. Offices are located in Kalispell, Missoula, Bozeman, Great~~

~~Falls, Billings, Glasgow, Miles City and Helena.~~

~~(2) Plans, technical designs, detailed sketches and/or maps must accompany the application. Applications without adequate project description will be returned to the applicant as incomplete.~~

~~(3) Applications will be reviewed twice each year. Applications must be received by March 1 and September 1 of each year.~~

~~(4) Applicants proposing more than one project must submit a separate application for each proposal.~~

(5) remains the same, but is renumbered as (2).

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

12.7.1106 PROJECT REVIEW AND ASSESSMENT (1) Applications for program funding will be reviewed in March and September of each year. Applications reviewed at each time will be those complete applications received before March 1 or before September 1, respectively. A program committee ~~of three department personnel~~ will review, evaluate and approve projects for funding. The fisheries division administrator will give the final approval for project funding.

(2) Copies of completed applications received by the department will be sent to the appropriate conservation district for their review and comments. In order to have their comments considered the conservation district must return its comments to the department within 10 days after its monthly meeting following receipt of the application ~~to the department Fisheries Division, Habitat Protection Bureau Chief, 1420 East Sixth Avenue, Helena, Montana 59620~~.

(3) through (8) remain the same.

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

12.7.1112 EFFECT OF RULE VIOLATIONS (1) Any person or organization falsifying financial statements or using river restoration funds for purposes other than the intended project will be disqualified from further participation in the program and will be required to reimburse the department for any compensation received. The person may also be subject to criminal prosecution.

AUTH: 87-1-201, MCA IMP: 87-1-257, MCA

4. Rationale: The repeal of the rules as proposed is part of the department's and commission's efforts to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

ARM 12.7.401 is proposed to be repealed by the department and commission. The rule addresses the construction and maintenance of fish ladders. The department and commission do not have specific rulemaking obligations for this rule, and the relevant statute, 87-1-222, MCA, is fairly specific, so this

rule can be eliminated as unnecessary. The rule is a joint rule of the commission and department.

The department proposes to repeal ARM 12.7.1101 through 12.7.1103 and to amend ARM 12.7.104, 12.7.1106 and 12.7.1112. ARM 12.7.1101 through 12.7.1112 implement the statutory river restoration program, although the program is not presently being funded in favor of the new future fisheries program established in the 1995 legislative session. The substance of these rules should stay in place. ARM 12.7.1101 through 12.7.1103 reiterate statutory language. They could be eliminated without damaging the substance of the rules. ARM 12.7.1104 deals with administrative matters, such as where applications for funding of projects can be submitted. It is proposed to substantially shorten this section. Only the first and last sentences would be retained. ARM 12.7.1106 and 12.7.112 are proposed to be amended to make adjustments necessary because of the language and rules proposed to be eliminated and for clarification of existing language.

5. Interested persons may present their data, views or arguments concerning the proposed rules in writing no later than May 23, 1996, to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

6. If a person who is directly affected by the proposed rules wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than May 23, 1996.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on number of persons in the state interested in fisheries and riparian habitat.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION AND DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of Fish, Wildlife & Parks Commission and Director of Department of Fish Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 12.8.101 and, 12.8.401 through 12.8.410, and amendments of ARM 12.8.502 all relating to the state park system, state recreational waterway system, and cultural resources.	)))))))	NOTICE OF PROPOSED REPEAL AND AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife & Parks (department) propose to repeal ARM 12.8.101, an introductory statement for the state park system rules; to repeal ARM 12.8.401 through 12.8.410 dealing with a state recreational waterway system; and to amend ARM 12.8.502, the definition section for the department cultural resource rules.

2. The rules proposed to be repealed are as follows:

ARM 12.8.101, a rule proposed to be repealed, is on page 12-503 of the Administrative Rules of Montana.

AUTH: 23-1-102, MCA IMP: 23-1-102, MCA

ARM 12.8.401 through 12.8.410, rules proposed to be repealed, are on pages 12-509.7 through 12-513 of the Administrative Rules of Montana.

AUTH: 87-1-303, MCA IMP: 87-1-201, MCA

3. The rule as proposed to be amended provides as follows:

12.8.502 DEFINITIONS For purposes of this part the definitions of 22-3-421, MCA, and the following definitions apply:

(1) and (2) remain the same.

~~(3) "Heritage property" means any district, site, building, structure or object located upon or beneath the earth or under water that is significant in American history, archaeology or culture.~~

(4) remains the same, but is renumbered (3).

~~(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water that are rare and critical to scientific research.~~

AUTH: 22-3-424, MCA IMP: 22-3-424, MCA

4. Rationale: The repeal of the rules as proposed is part of the department's and commission's efforts to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

The department proposes to repeal ARM 12.8.101. This is a general statement of policy, not a rule. The rule can be eliminated as unnecessary.

The commission proposes to repeal ARM 12.8.401 through 12.8.410, the state recreational waterway system rules. These rules have been on the books since at least 1972. They are more of a planning statement that was current at the time, but they would not normally be the subject of rules. They are outdated by changes in circumstances, statutes and the present practices of the department. The department and commission have substantially accomplished the purposes of these rules through river basin planning. The rules are no longer needed as a guide. The designation "recreational waterway" is no longer used by the department and commission.

The department proposes to amend the definition section, ARM 12.8.502, in its cultural resources rules to eliminate definitions that repeat the statutory definitions in 22-3-421, MCA.

5. Interested persons may present their data, views or arguments concerning the proposed rules in writing no later than May 23, 1996, to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

6. If a person who is directly affected by the proposed rules wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Robert N. Lane, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than May 23, 1996.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of persons in Montana interested in state parks, recreational use of rivers, and the state's cultural resources.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION AND DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of Fish, Wildlife & Parks Commission and Director of Department of Fish Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE FISH, WILDLIFE & PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of proposed repeal of ARM 12.9.105, 12.9.106, and 12.9.403 addressing wild turkey policy, 10-80 baits, and the reintroduction of peregrine falcon.	NOTICE OF PROPOSED REPEAL OF RULE NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On May 31, 1996, the Fish, Wildlife and Parks Commission (commission) proposes to repeal ARM 12.9.105 which is a wild turkey transplant policy; to repeal ARM 12.9.106 which restricts the use of 10-80 bait on Department of Fish, Wildlife and Parks property; and, to repeal ARM 12.9.403 addressing the reintroduction of the peregrine falcon.

2. The rules proposed to be repealed are as follows:

ARM 12.9.105, a rule proposed to be repealed, is on page 12-611 of the Administrative Rules of Montana.

AUTH: 87-1-301, MCA IMP: 87-1-201, 87-1-301, MCA

ARM 12.9.106, a rule proposed to be repealed, is on page 12-611 of the Administrative Rules of Montana.

AUTH: 87-1-301, MCA IMP: 87-1-201, 87-1-301, MCA

ARM 12.9.403, a rule proposed to be repealed, is on page 12-631 of the Administrative Rules of Montana.

AUTH: 87-1-704 and 87-1-711, MCA
IMP: 87-1-704 and 87-1-711, MCA

3. Rationale: The repeal of the rules as proposed is part of the commission's effort to reduce rules by repealing those that are unnecessary or duplicative. This is to meet the intent of HJR 5 of the 1995 legislative session.

The commission proposes to repeal ARM 12.9.105 that establishes a policy for wild turkey transplants. This rule has for the most part been supplemented by statutes. Essentially all of the requirements of this rule for wild turkey transplants approved by the commission are covered in meeting the importation, introduction and transplantation of wildlife statutes, Title 87, Chapter 5, part 7. These statutes cover all wildlife species. The department does not have a specific rule for transplanting any other species. This rule is proposed for repeal as unnecessary and duplicative of the statutes.

The commission proposes to repeal ARM 12.9.106 restricting the use of 10-80 bait on department property. Because 10-80 bait has been banned by federal law and can be administered only under federal permit, the rule is unnecessary.

The commission proposes to repeal ARM 12.9.403 that addresses the reintroduction of peregrine falcons in the state. The peregrine falcon has been proposed for delisting under the Endangered Species Act by the United States Fish & Wildlife Service. The goals outlined in the rule have been accomplished. In addition, it is unnecessary to go to the commission for hacking site approval as the analysis of the impacts of such efforts has been accomplished in a Montana Environmental Protection Act process. This follows the statutory process for the importation, introduction and transplantation of wildlife under Title 87, Chapter 5, part 7. For the commission to approve reintroduction of the peregrine falcon, it is necessary to follow the statutory process. This rule is no longer needed.

4. Interested persons may present their data, views or arguments concerning the proposed repeal in writing no later than May 23, 1996, to Bob Lane, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 596201-0701.

5. If a person who is directly affected by the proposed repeal wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Bob Lane, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 596201-0701. A written request for hearing must be received no later than May 23, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on the number of people in Montana interested in wild turkey management, the management of department held lands, and the welfare of the peregrine falcon.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION

Stan Meyer, Chairman

Certified to the Secretary of State on April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 16.8.1419, regarding fluoride emissions-phosphate processing.	)))))	NOTICE OF PROPOSED REPEAL OF 16.8.1419 NO PUBLIC HEARING CONTEMPLATED

(Air Quality)

To: All Interested Persons

1. On June 21, 1996, the board proposes to repeal ARM 16.8.1419 regarding fluoride emissions-phosphate processing.

2. The rule proposed to be repealed may be found at page 16-230 of the Administrative Rules of Montana.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203

3. The proposed repeal is necessary because this rule was superseded by adoption of the fluoride-in-forage ambient standard, ARM 16.8.813, on August 15, 1980. ARM 16.8.813 includes all of the requirements necessary to protect public health. If this rule remains in effect, Rhone-Poulenc, the only existing phosphate processing plant in Montana, would be required to develop a compliance plan for compliance with this rule as part of their operating permit application. Fluoride emissions are currently covered under the fluoride-in-forage rule as well as under Rhone-Poulenc's air quality permit.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than May 25, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than May 25, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be

directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 250 based on the number of people estimated to be affected by fluoride emissions in the state.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.701, 16.8.945, and 16.8.1701 adopting the current federal definition of volatile organic compounds.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED (Air Quality)

To: All Interested Persons

1. On June 21, 1996, the board proposes to amend the above referenced rules.

2. The rules as proposed to be amended appear as follows (new material is underlined; material to be deleted is interlined):

16.8.701 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1)-(40) Remain the same.

(40)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1- trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

(41)-(42) Remain the same.

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

16.8.945 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1)-(29) Remain the same.

(29)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1701 DEFINITIONS For the purpose of this subchapter:

(1)-(19) Remain the same.

(20)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene

(tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

3. The proposed amendments are necessary to adopt the current federal definition of volatile organic compounds (VOC) and maintain consistency with federal regulation. The proposed change removes perchloroethylene from the definition of VOC's due to its non-reactivity in relation to creating photochemical smog.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than May 25, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than May 25, 1996.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 250 based on the estimated number of people affected by VOC emissions in the state.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.8.2026 regarding acid rain	NOTICE OF PROPOSED AMENDMENT OF RULE NO PUBLIC HEARING CONTEMPLATED (Air Quality)

To: All Interested Persons

1. On June 21, 1996, the board proposes to amend the above referenced rule.

2. The rule as proposed to be amended appears as follows (new material is underlined; material to be deleted is interlined):

16.8.2026 ACID RAIN--PERMITS REGULATION (1) For the purpose of this rule, the following definitions apply:

(a) "Permitting authority," as used in 40 CFR Part 72, means the Montana department of environmental quality ~~air quality division, except when duties cannot be delegated to the state by the US environmental protection agency, in which case "administrator" means the administrator of the US environmental protection agency~~.

(b) Remains the same.

(2) Remains the same.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

3. ARM 16.8.2026 incorporates by reference the operating permit requirements of the federal regulations in 40 CFR Parts 72 and 75, regarding prevention of acid rain. The board is proposing to amend ARM 16.8.2026 to provide that, for all purposes under the rule, the term "permitting authority" means the department of environmental quality. When the board adopted the present rule, the department believed that there were duties under the federal regulations that the environmental protection agency (EPA) could not delegate to the department. EPA recently informed the department that there are no acid rain reduction duties, regarding facilities regulated by the department, that EPA cannot delegate to the department and EPA has requested the amendment to make this clear.

Federal acid rain regulations establish a system of sulfur dioxide emission allowances for electric generating plants that will be implemented in two phases, depending upon present emissions and date of construction. Under the federal

regulations, the permitting authority for Phase II facilities is always the state, local or other delegated air pollution control agency, rather than EPA. Phase II begins in the year 2000 and applies to approximately 2000 existing utility units and to new utility units constructed after that date. Existing and new utility units in Montana will be Phase II facilities, so the department will always be the permitting authority for acid rain permits in this state.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than May 25, 1996.

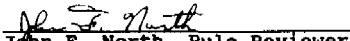
5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than May 25, 1996.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 250 based on the estimated number of people affected by electric generating plant emissions in the state.

BOARD OF ENVIRONMENTAL REVIEW

by 
CINDY E. YOUNKIN, Chairperson

Reviewed by


John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.8.1429, and the adoption of new rule I adopting federal regulations for the administration of maximum achievable control technology standards	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT AND ADOPTION OF RULES (Air Quality)

To: All Interested Persons

1. On June 21, 1996, at 10:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

2. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.8.1429 INCORPORATIONS BY REFERENCE ~~(1) In this subchapter, and unless expressly provided otherwise, the following is applicable:~~

~~(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);~~

~~(b) Where the board has adopted another rule of the department or another agency of the state of Montana that appears in a different title or chapter of the Administrative Rules of Montana (ARM), the reference in this subchapter shall refer to the other rule in the ARM as such rule existed on June 24, 1993.~~

~~(2)~~(1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a)-(h) Remain the same.

(i) 40 CFR Part 63, specifying emission standards for hazardous air pollutant source categories.

~~(i)(2) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, 836 Front St., Helena, MT 59620. Copies of the federal materials may also be obtained at: EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; at the libraries of each of the 10 EPA Regional Offices; as supplies permit from the US Environmental Protection Agency, Research Triangle Park, NC 27711; and for purchase from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical~~

~~Information Service (order no. PB 87 100012)~~. [New Rule I in MAR Notice 17-022] lists the addresses for obtaining copies of the above-referenced materials.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

NEW RULE I EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (1) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR part 63, incorporated by reference in ARM 16.8.1429.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA.

3. The board is proposing these amendments and adoption to maintain state primacy in administration of the federal maximum achievable control technology (MACT) standards for hazardous air pollutants specified in 40 CFR Part 63. Pursuant to House Joint Resolution No. 5 (1995), the board is also proposing to delete language from ARM 16.8.1429 that is duplicated in other subchapters of the air quality rules, regarding inspection and copying of documents. Simultaneously with this notice, the board is proposing New Rule I in MAR Notice 17-022, to provide one rule for ARM Title 16, chapter 8, specifying the editions of rules and statutes incorporated by reference and specifying procedures for inspection and copying of all materials referenced in the chapter.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, and must be received no later than June 28, 1996.

Reviewed by

JOHN F. NORTH,
Rule Reviewer

BOARD OF ENVIRONMENTAL REVIEW

CINDY YOUNKIN, Chairperson

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.1101, 1105 and 1120 adding human health risk assessment to the preconstruction permit application requirements for incineration facilities subject to 75-2-215, MCA.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On June 21, 1996, at 10:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment of the above-captioned rules.

2. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.8.1101 DEFINITIONS For the purposes of this subchapter:

(1)-(9) Remain the same.

(10) "Negligible risk to the public health, safety, and welfare and to the environment" means an increase in excess lifetime cancer risk of less than 1.0×10^{-6}, for any individual pollutant, and 1.0×10^{-5}, for the aggregate of all pollutants, and an increase in the sum of the non-cancer hazard quotients for all pollutants with similar toxic effects of less than 1.0, as determined by a human health risk assessment conducted according to the requirements contained in ARM 16.8.1105(5). The department shall also consider environmental impacts, as identified in any environmental analysis conducted pursuant to the requirements of the Montana Environmental Policy Act, in determining compliance with all applicable rules or requirements requiring protection of public health, safety, and welfare and the environment.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA

16.8.1105 NEW OR ALTERED SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (1)-(4) Remain the same.

(5) An applicant for a preconstruction permit for an incineration facility subject to 75-2-215, MCA, shall submit a human health risk assessment protocol and a human health risk assessment as part of an air quality preconstruction permit application. The human health risk assessment must demonstrate that the ambient concentrations of pollutants resulting from emissions from the incineration facility subject to 75-2-215, MCA, constitute no more than a negligible risk to the public health, safety, and welfare and to the environment. At a minimum, the human health risk assessment must meet the following requirements:

(a) The human health risk assessment must include an emissions inventory listing potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA).

(b) A characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility must be submitted as part of the preconstruction permit application.

(c) The human health risk assessment must address the impacts of all pollutants inventoried in (a) above, except as provided below. Pollutants may be excluded from the human health risk assessment if the department determines that exposure from inhalation is the only appropriate pathway to consider in the human health risk assessment and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second, provided the incineration facility subject to 75-2-215, MCA, has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F, and that there is a distance of at least 5 meters from the stack to the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in Table 1 or Table 2. The department shall periodically review accepted toxicity value databases to determine if the de minimus levels in (i) and (ii) should be updated.

(d) The human health risk assessment must address risks from all appropriate exposure pathways. Incineration facilities subject to 75-2-215, MCA, that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 4-1 or 4-2 of the department's health risk assessment procedures/model need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(e) The human health risk assessment must address the human health risk impact of all hazardous air pollutants, as described in (a) above, from the emitting unit or units that constitute the incineration facility subject to 75-2-215, MCA, from all other existing incineration facilities subject to 75-2-215, MCA, at the facility, and from all other new or existing emitting units solely supporting any incineration facility subject to 75-2-215, MCA, such as fugitive emissions from fuel storage. Emissions from existing emitting units that partially support the incineration facility, but that do not change the type or amount of emissions allowed under any existing permit in effect at the time of the permit application, need not be considered in the human health risk assessment. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(f) The health risk assessment must be performed in

accordance with accepted human health risk assessment practices, or state or federal guidelines in effect at the time the human health risk assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The human health risk assessment procedures used may be modified if site-specific conditions warrant the use of alternative procedures to appropriately assess human health risk.

(g) As part of the application, the applicant shall submit to the department a human health risk assessment protocol detailing the human health risk assessment procedures. At a minimum, the human health risk assessment protocol must include a description of the pollutants considered in the analysis, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the human health risk assessment.

(h) A summary of the human health risk assessment protocol must be included in the permit analysis. The summary must clearly define the scope of the risk assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the human health risk assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated as required by the Montana Environmental Policy Act, in determining compliance with all applicable rules or requirements requiring protection of public health, safety, and welfare and the environment.

(i) The department may impose additional requirements for the human health risk assessment, on a case-by-case basis, if the department reasonably believes that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed health risk assessment to adequately define the potential public health impact. Additional requirements for the human health risk assessment may include specific emission inventory procedures for determining emissions from the incineration facility subject to 75-2-215, MCA, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

TABLE 1

CAS #	CHEMICAL	Cancer Annual ($\mu g/m^3$)
75070	Acetaldehyde	4.5455e-02
79061	Acrylamide	7.6923e-05
107131	Acrylonitrile	1.4706e-03
1332214	Asbestos	5.1546e-04
71432	Benzene	1.2048e-02
92875	Benzidine	1.4925e-06
117817	Bis(2-Ethylhexyl)Phthalate (DEHP)	4.1667e-02
542881	Bis(Chloromethyl) Ether	1.6129e-06
75252	Bromoform	9.0909e-02
106990	1,3-Butadiene	3.5714e-04
56235	Carbon Tetrachloride	6.6667e-03
57749	Chlordane	2.7027e-04
67663	Chloroform	4.3478e-03
126998	Chloroprene	7.6923e-01
132649	Dibenzofurans	2.6316e-09
96128	1,2-Dibromo-3-Chloropropane	5.0000e-05
106467	1,4-Dichlorobenzene (p)	9.0909e-03
91941	3,3-Dichlorobenzidene	2.9412e-04
111444	Dichloroethyl Ether	3.0303e-04
123911	1,4-Dioxane(1,4-Diethyleneoxide)	1.2987e-02
122667	1,2-Diphenylhydrazine	4.5455e-04
106898	Epichlorohydrin	8.3333e-02
51796	Ethyl Carbamate (Urethane)	3.4483e-04
106934	Ethylene Dibromide	4.5455e-04
107062	Ethylene Dichloride	3.8462e-03
75218	Ethylene Oxide	1.1364e-03
50000	Formaldehyde	7.6923e-03
76448	Heptachlor	7.6923e-05
118741	Hexachlorobenzene	2.1739e-04
87683	Hexachlorobutadiene	4.5455e-03
67721	Hexachloroethane	2.5000e-02
302012	Hydrazine	2.0408e-05
58899	Lindane (All Isomers)	9.0909e-05
75092	Methylene Chloride	2.1277e-01
62759	N-Nitrosodimethylamine	7.1429e-06
87865	Pentachlorophenol	2.1739e-02
1336363	Polychlorinated Biphenyls	7.1429e-05
75569	Propylene Oxide	2.7027e-02
1746016	2,3,7,8-TCDD	2.6316e-09
79345	1,1,2,2-Tetrachloroethane	1.7241e-03
127184	Tetrachloroethylene (Perch)	1.6949e-02
8001352	Toxaphene	3.1250e-04
79005	1,1,2-Trichloroethane	6.2500e-03
79016	Trichloroethylene	5.0000e-02
88062	2,4,6-Trichlorophenol	3.2258e-02
75014	Vinyl Chloride	1.2821e-03
75354	Vinylidene Chloride	2.0000e-03
	Arsenic Compounds	2.3256e-05
	Beryllium Compounds	4.1667e-05
	Cadmium Compounds	5.5556e-05
	Chromium Compounds	8.3333e-06
	Coke Oven Emissions	1.6129e-04

	Nickel Compounds	3.8462e-04
	Polycylic Organic Matter	
56553	Benz(a)anthracene	5.8824e-05
205992	Benzo(b)fluoranthene	5.8824e-05
207089	Benzo(k)fluoranthene	5.8824e-05
50328	Benzo(a)pyrene	5.8824e-05
53703	Dibenz(a,h)anthracene	5.8824e-05
193395	Indeno(1,2,3-cd)pyrene	5.8824e-05

TABLE 2

CAS #	CHEMICAL	Non-Cancer Chronic Annual (ug/m³)	Non-Cancer Acute Annual (ug/m³)
75070	Acetaldehyde	9.0000e-02	
107028	Acrolein	2.2000e-04	2.5000e-02
79061	Acrylamide	7.0000e-03	
79107	Acrylic Acid	1.0000e-02	
107131	Acrylonitrile	2.0000e-02	
107051	Allyl Chloride	1.0000e-02	
62533	Aniline	1.0000e-02	
71432	Benzene	7.1000e-01	
92875	Benzidine	1.0000e-01	
100447	Benzyl Chloride	1.2000e-01	5.0000e-01
117817	Bis(2-Ethylhexyl)Phthalate (DEHP)	7.0000e-01	
75150	Carbon Disulfide	7.0000e+00	
56235	Carbon Tetrachloride	2.4000e-02	1.9000e+00
7782505	Chlorine	7.1000e-01	2.3000e-01
532274	2-Chloroacetophenone	3.0000e-04	
108907	Chlorobenzene	7.0000e-01	
67663	Chloroform	3.5000e-01	
126998	Chloroprene	1.0000e-02	
1319773	Cresols/Cresylic Acid	1.8000e+00	
95487	o-Cresol	1.8000e+00	
108394	m-Cresol	1.8000e+00	
106445	p-Cresol	1.8000e+00	
132649	Dibenzofurans	3.5000e-08	
96128	1,2-Dibromo-3- Chloropropane	2.0000e-03	
106467	1,4-Dichlorobenzene (p)	8.0000e+00	
542756	1,3-Dichloropropene	2.0000e-01	
62737	Dichlorvos	5.0000e-03	
68122	Dimethyl Formamide	3.0000e-01	
123911	1,4-Dioxane(1,4-Diethyleneoxide)	4.0000e-02	2.0000e+01
106898	Epichlorohydrin	1.0000e-02	
106887	1,2-Epoxybutane	2.0000e-01	
140885	Ethyl Acrylate	4.8000e-01	
100414	Ethyl Benzene	1.0000e+01	
75003	Ethyl Chloride (Chloroethane)	1.0000e+02	
106934	Ethylene Dibromide	4.6000e-02	
107062	Ethylene Dichloride	9.5000e-01	
75218	Ethylene Oxide	6.0000e+00	
50000	Formaldehyde	3.6000e-02	3.7000e+00
118741	Hexachlorobenzene	2.8000e-02	
77474	Hexachlorocyclopentadiene	2.4000e-03	
822060	Hexamethylene-1,6-Diisocyanate	1.0000e-04	
110543	Hexane	2.0000e+00	
302012	Hydrazine	2.4000e-03	
7647010	Hydrochloric Acid	2.0000e-01	1.0000e+01
7664393	Hydrogen Flouride (HF Acid)	5.9000e-02	5.8000e+00
58899	Lindane (All Isomers)	1.0000e-02	

108316	Maleic Anhydride	2.4000e-02	1.0000e-01
67561	Methanol	6.2000e+00	
74839	Methyl Bromide (Bromomethane)	5.0000e-02	
71556	Methyl Chloroform	3.2000e+00	1.9000e+03
78933	Methyl Ethyl Ketone (2-Butanone)	1.0000e+01	
624839	Methyl Isocyanate	3.6000e-03	
80626	Methyl Methacrylate	9.8000e+00	
1634044	Methyl Tert Butyl Ether	3.0000e+01	
75092	Methylene Chloride	3.0000e+01	3.5000e+01
101688	Methylene Diphenyl Diisocyanate	2.0000e-04	
101779	4,4'-Methylenedianiline	1.9000e-02	
91203	Naphthalene	1.4000e-01	
98953	Nitrobenzene	1.7000e-02	
79469	2-Nitropropane	2.0000e-01	
87865	Pentachlorophenol	2.0000e-03	
108952	Phenol	4.5000e-01	
75445	Phosgene	1.2000e+00	
7803512	Phosphine	3.0000e-03	
7723140	Phosphorus	7.0000e-04	
85449	Phthalic Anhydride	7.0000e+01	
1336363	Polychlorinated Biphenyls	1.2000e-02	
78875	Propylene Dichloride	4.0000e-02	
75569	Propylene Oxide	3.0000e-01	1.0000e+01
100425	Styrene	1.0000e+01	
1746016	2,3,7,8-TCDD	3.5000e-08	
127184	Tetrachloroethylene (Perch)	3.5000e-01	6.8000e+01
108883	Toluene	4.0000e+00	
584849	2,4-Toluene Diisocyanate	7.0000e-04	
79016	Trichloroethylene	6.4000e+00	
121448	Triethylamine	7.0000e-02	
108054	Vinyl Acetate	2.0000e+00	
593602	Vinyl Bromide	3.0000e-02	
75014	Vinyl Chloride	2.6000e-01	
75354	Vinylidene Chloride	3.2000e-01	
1330207	Xylenes (Isomers and Mixture)	3.0000e+00	4.4000e+01
	Antimony Compounds	2.0000e-03	
	Arsenic Compounds	5.0000e-03	
	Beryllium Compounds	4.8000e-05	
	Cadmium Compounds	3.5000e-02	
	Chromium Compounds	2.0000e-05	
	Cyanide Compounds	7.0000e-01	3.3000e+01
	Ethyl Glycol But Ether	2.0000e-01	
	Ethyl Glycol Ethyl Ether	3.7000e+00	
	Ethyl Gly MonoBut Ether	1.5000e+01	
	Ethyl Gly Monoethyl Ether	2.0000e+00	
	Ethyl Gly Ethyl Ether Acetate	6.4000e-01	
	Ethyl Glycol Methyl Ether	2.0000e-01	3.2000e+00
	Ethyl Gly Methyl Ether Acetate	5.7000e-01	
	Ethyl Gly MonoEthyl Ether Acetate	1.6000e+01	
	Lead Compounds	1.5000e-02	
	Manganese Compounds	5.0000e-04	
	Mercury Compounds	3.0000e-03	3.0000e-01
	Fine Mineral Fibers	2.4000e-01	
	Nickel Compounds	2.4000e-03	1.0000e-02
	Selenium Compounds	5.0000e-03	2.0000e-02

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA

16.8.1120 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 60, ~~(July 1, 1993 ed.), which sets forth~~ specifying standards of performance for new stationary sources;

(b) 40 CFR Part 61, ~~(July 1, 1993 ed.), which sets forth~~ specifying emission standards for hazardous air pollutants;

(c) 40 CFR Part 51, subpart I, ~~(July 1, 1993 ed.), which sets forth~~ specifying requirements for state programs for issuing air quality preconstruction permits;

(d) 40 CFR 52.21, ~~(July 1, 1993 ed.), which sets forth federal regulations~~ specifying requirements for prevention of significant deterioration of air quality~~;~~ ~~and~~

(e) 40 CFR Part 52, subpart BB ~~(July 1, 1993 ed.)~~, ~~which sets forth~~ specifying the Montana state implementation plan for ~~the control of~~ controlling air pollution in Montana~~;~~

(f) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995; and

(g) Sec.112(b) of the Federal Clean Air Act, 42 USC et seq., listing hazardous air pollutants.

(2) ~~Copies of the above regulations and the state implementation plan are available for review and copying at the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA regional offices. Interested persons seeking a copy of the CFR may address their requests directly to the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.~~ [New Rule I in MAR Notice 17-022] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-211, 75-2-215, MCA

3. Section 75-2-215(3)(d), MCA, provides that the Department may not issue an air quality preconstruction permit for an incineration facility subject to 75-2-215, MCA, unless the Department finds that the projected emissions and ambient concentrations will constitute "negligible risk to the public health, safety, and welfare and to the environment." However, the statutes do not define this term. To implement section 75-2-215, MCA, it is necessary to define this term.

The proposed amendments would implement the requirements of 75-2-215, MCA, by adding a definition of "negligible risk to the public health, safety, and welfare and to the environment." Additionally, for the Department to determine whether the proposed construction or alteration poses a negligible risk, the proposed amendments would require that the application contain a health risk assessment and health risk assessment protocol meeting certain requirements. The requirement to demonstrate "negligible risk to the public health, safety, and welfare and to the environment" is applicable to all incineration facilities subject to 75-2-215, MCA. The proposed amendments to ARM 16.8.1105 add requirements for a human health risk assessment to the current preconstruction permit application requirements for

incineration facilities subject to 75-2-215, MCA.

To comply with House Joint Resolution No. 5 (1995), the board is proposing to delete language from ARM 16.8.1120 that is duplicated in other subchapters of the air quality rules, regarding inspection and copying of documents. Simultaneously with this notice, the board is proposing New Rule I in MAR Notice 17-022, to provide one rule for ARM Title 16, chapter 8, specifying procedures for inspection and copying of all state and federal written materials referred to in the chapter.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901, and must be received no later than June 28, 1996.

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH,
Rule Reviewer

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.704, 708, 807, 809, 813, 815, 816, 817, 820, 821, 946, 1001, 1004, 1302, 1503, 1601, 1701, 1702, 1802, and 2003, and the adoption of new rules I-VI, updating the incorporations by reference and references to the MCA to the most recent regulations and statutes and combining certain provisions of the air quality rules)	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED (Air Quality)

To: All Interested Persons

1. On June 21, 1996, the board proposes to amend and adopt the above referenced rules updating the incorporations by reference to the most recent federal regulations.

2. The rules as proposed to be amended and adopted appear as follows (new material is underlined; material to be deleted is interlined):

16.8.704 TESTING REQUIREMENTS (1) and (2) Remain the same.

~~(3) The board hereby adopts and incorporates by reference 40 CFR Part 51, Appendix P, which is a federal agency regulation setting forth the continuous emission monitoring requirements for existing major stationary sources. A copy of 40 CFR Part 51, Appendix P may be obtained from the Air Quality Bureau, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.708 INCORPORATIONS BY REFERENCE (1) ~~In this subchapter, and unless expressly provided otherwise, the following is applicable:~~

~~(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);~~

~~(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990);~~

~~(c) Where the board has adopted a section of the Montana Code Annotated (MCA) by reference, the reference in the board~~

~~rule shall refer to the section of the MCA as found in the 1991 edition;~~

~~(d) Where the board has adopted another rule of the department or another agency of the state of Montana that appears in a different title or chapter of the Administrative Rules of Montana (ARM), the reference in this subchapter shall refer to the other rule in the ARM as such rule existed on June 24, 1993.~~

~~(2)~~ For the purposes of this subchapter, the board hereby adopts and incorporates ~~herein~~ by reference the following:

(a)-(p) Remain the same.

~~(q)(2) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402~~ [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

16.8.807 AMBIENT AIR MONITORING (1) Remains the same.

(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual ~~(July 1991 ed.)~~, all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Manual ~~(July 1991 ed.)~~ except when more stringent requirements are determined by the department to be necessary pursuant to the US Environmental Protection Agency Quality Assurance Manual ~~(EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV)~~, or 40 CFR, Part 50 including appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G ~~(July 1, 1990 ed.)~~, at which time the latter 2 documents shall be adhered to for the specific exception.

(3) Remains the same.

~~(4) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (July 1991 ed.) and the US Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G (July 1, 1990 ed.), which are state and federal agency manuals and regu-~~

~~lations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.~~
AUTH: 75-2-111, MCA; IMP: 75-2-201, 75-2-202, MCA

16.8.809 METHODS AND DATA (1) Except as otherwise provided in this subchapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual ~~(July 1991 ed.)~~, all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in the Montana Quality Assurance Manual, ~~(July 1991 ed.)~~ except when more stringent requirements are contained in the US Environmental Protection Agency Quality Assurance Manual ~~(EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV)~~ or 40 CFR, Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G ~~(July 1, 1990 ed.)~~. (2) Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard ~~shall~~ constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances ~~shall be~~ are applicable to each monitoring location. (3) If a valid recorded value comprises in whole or in part an exceedance of an ambient air quality standard, ~~such~~ the recorded value ~~shall~~ does not comprise in whole or in part a second exceedance of the same ambient air quality standard.

~~(2) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (July 1991 ed.) and the US Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G (July 1, 1990 ed.), which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.~~
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.813 FLUORIDE IN FORAGE (1) Remains the same.
(2) The following sampling protocol must be applied:
(a)-(i) Remain the same.
~~(j) The department hereby adopts and incorporates herein by reference Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T. Methods of Air~~

~~Sampling and Analysis, Second Edition is a nationally recognized authority setting forth the laboratory analytic procedure for chemical analysis of plant tissue. A copy of Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620.~~
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.815 AMBIENT AIR QUALITY STANDARD FOR LEAD (1) Remains the same.

(2) For determining compliance with this rule, lead shall be measured by the high-volume method as more fully described in 40 CFR Part 50, Appendix B, ~~(July 1, 1987 ed.)~~ and by the atomic absorption method as more fully described in 40 CFR Part 50, Appendix G, ~~(July 1, 1987 ed.)~~ or by an approved equivalent method.

~~(3) The department hereby adopts and incorporates herein by reference the following sections of the federal regulations:~~

~~(a) 40 CFR Part 50, Appendix B (July 1, 1987 ed.), which contains the reference method for the determination of suspended particulate matter in the atmosphere (high-volume method); and~~

~~(b) 40 CFR Part 50, Appendix G (July 1, 1987 ed.), which contains the reference method for the determination of lead in suspended particulate matter collected from ambient air.~~

~~(c) A copy of the above sections is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; or from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460.~~
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.816 AMBIENT AIR QUALITY STANDARDS FOR NITROGEN DIOXIDE (1) Remains the same.

(2) ~~Measurement method:~~ For determining compliance with this rule, nitrogen dioxide shall be measured by the chemiluminescence method, as more fully described in ~~Title~~ 40 CFR~~,~~ Part 50, ~~(~~Appendix F~~)~~, ~~CFR (1979),~~ or by an approved equivalent method.
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.817 AMBIENT AIR QUALITY STANDARD FOR OZONE (1) Remains the same.

(2) ~~Measurement method:~~ For determining compliance with this rule, ozone shall be measured by the chemiluminescence method, as more fully described in ~~Title~~ 40 CFR~~,~~ Part 50, ~~(~~Appendix D~~)~~, ~~CFR (1979),~~ or by an approved equivalent method.
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.820 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE (1) Remains the same.

(2) ~~Measurement method:~~ For determining compliance with this rule, sulfur dioxide shall be measured by the

pararosaniline method as more fully described in ~~Title~~ 40 CFR~~,~~ Part 50~~,~~ ~~(~~Appendix A~~)~~, ~~CFR (1979),~~ or by an approved equivalent method.

AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.821 AMBIENT AIR QUALITY STANDARD FOR PM-10

(1) Remains the same.

(2) For the purposes of this rule, expected exceedance and expected annual average shall be determined in accordance with 40 CFR Part 50, Appendix K ~~(52 FR 24667, July 1, 1987)~~.

(3) For determining compliance with this rule, PM-10 shall be measured by an applicable reference method based on 40 CFR Part 50, Appendix J ~~(52 FR 24664, July 1, 1987)~~, and designated in accordance with 40 CFR Part 53 ~~(52 FR 24727, July 1, 1987)~~ or by an equivalent method designated in accordance with 40 CFR Part 53 ~~(July 1, 1987 ed.)~~.

~~(4) The department hereby adopts and incorporates herein by reference the following sections of the federal regulations:~~

~~(a) 40 CFR Part 50, Appendix J (52 FR 24664, July 1, 1987), which contains reference methods for the determination of particulate matter as PM-10 in the atmosphere;~~

~~(b) 40 CFR Part 50, Appendix K (52 FR 24667, July 1, 1987), which contains an interpretation of national ambient air quality standards for particulate matter; and~~

~~(c) 40 CFR Part 53 (52 FR 24727, July 1, 1987), which pertains to ambient air monitoring reference methods and equivalent methods.~~

~~(d) A copy of the above sections is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; or from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460.~~

AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

16.8.946 INCORPORATION BY REFERENCE (1) ~~In this subchapter, and unless expressly provided otherwise, where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR).~~

~~(2)~~ For the purposes of this subchapter, the board hereby adopts and incorporates ~~herein~~ by reference the following:

(a)-(g) Remain the same.

~~(h)(2) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) (order no. PB 87-100012) and the guidelines on~~

~~air quality models (revised) (1986) (EPA publication no. 450/2-78-027R) and supplement A (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.~~ [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1001 APPLICABILITY--VISIBILITY REQUIREMENTS

(1) Remains the same.

~~(2) The board hereby adopts and incorporates by reference 40 CFR 81.327 which is a federal agency rule setting forth attainment status designation for Montana pursuant to section 107 of the Federal Clean Air Act. A copy of 40 CFR 81.327 may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-2-111, 75-2-203 MCA; IMP: 75-2-203, 75-2-204, and 75-2-211, MCA

16.8.1004 VISIBILITY MODELS (1) Remains the same.

~~(2) The board hereby adopts and incorporates by reference "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) which is a federal agency publication setting forth methods by which estimates of visibility impairment may be made. A copy of "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) is available for public review and copying at the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1302 PROHIBITED OPEN BURNING--WHEN PERMIT REQUIRED

~~(1) The board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes. A copy of 40 CFR Part 261 may be obtained from the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

(2) and (3) Remain the same but are renumbered (1) and (2).

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

16.8.1503 STANDARD FOR VISIBLE EMISSIONS

(1) No owner or operator subject to ~~the provisions of~~ this rule may cause the emission into the atmosphere from any potroom group of any gasses or particles which exhibit 10% opacity or greater, as determined by EPA Reference Method 9 in Appendix A of 40 CFR~~,~~ Part 60~~, (July 1, 1987 edition)~~.

~~(2) For the purposes of this rule, the board hereby adopts and incorporates herein by reference Method 9 of Appendix A of 40 CFR Part 60 (July 1, 1987 edition). Method 9 is included in the appendix to a federal agency rule and sets~~

~~forth the method for visual determination of the opacity of emissions from stationary sources including the determination of plume opacity by qualified observers. The method also includes procedures for the training and certification of observers and procedures to be used in the field for determination of plume opacity. A copy of Test Method 9 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.~~
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1601 CERTIFICATION AND TESTING STANDARDS

(1) Remains the same.

(2) Pursuant to 15-32-102~~(5)(A)(II)~~ (6)(a)(ii), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA ~~(1990 ed.)~~. In determining if a pellet conversion unit meets the particulate emission rate set forth in 15-32-102~~(5)(A)(II)~~ (6)(a)(ii), MCA, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(3) Pursuant to 15-32-102~~(5)(A)(III)~~ (6)(a)(iii), MCA, and for the purposes of certifying the air-to-fuel ratio of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA ~~(1990 ed.)~~. In determining if a pellet conversion unit meets the requirements in 15-32-102~~(5)(A)(III)~~ (6)(a)(iii), MCA, concerning air-to-fuel ratio, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(4) Pursuant to 15-32-102~~(5)(B)~~ (6)(b), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that burns wood or other nonfossil biomass, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA ~~(1990 ed.)~~.

(5) Remains the same.

~~(6) The department hereby adopts and incorporates by reference 40 CFR Part 60, subpart AAA, which establishes criteria and procedures for testing particulate emissions and the air-to-fuel ratio for wood stoves and furnaces. Copies of 40 CFR Part 60, subpart AAA may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.~~
AUTH: 15-32-203, MCA; IMP: 15-32-102, 15-32-201, MCA

16.8.1701 DEFINITIONS For the purposes of this subchapter:

(1)-(13) Remain the same.

(14)(a)-(b) Remain the same.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165 ~~(July 1, 1993 ed.)~~, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) Remains the same.

(e) A decrease in actual emissions is creditable only to the extent that:

(i)-(ii) Remain the same.

(iii) the department has not relied on it in issuing any air quality preconstruction permit under regulations approved pursuant to 40 CFR Part 51, subpart I ~~(July 1, 1993 ed.)~~, or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) Remains the same.

(f) Remains the same.

(15)-(19) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1702 INCORPORATION BY REFERENCE ~~(1) In this subchapter, and unless expressly provided otherwise, the following is applicable:~~

~~(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);~~

~~(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990);~~

~~(2)~~ (1) For the purposes of this subchapter, the board hereby adopts and incorporates ~~herein~~ by reference the following:

(a)-(f) Remain the same.

~~(g)~~(2) ~~A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-1000-~~

~~12).~~ [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1802 INCORPORATION BY REFERENCE ~~(1) In this subchapter, and unless expressly provided otherwise, the following is applicable:~~

~~(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);~~

~~(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990).~~

~~(2)~~ (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a)-(f) Remain the same.

~~(g)(2) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, 836 Front St., Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-1000-12)~~ [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.2003 INCORPORATIONS BY REFERENCE ~~(1) In this subchapter, and unless expressly provided otherwise, the following is applicable:~~

~~(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);~~

~~(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990).~~

~~(2)~~ (1) For the purposes of this subchapter, the board hereby adopts and incorporates ~~herein~~ by reference the following:

(a)-(g) Remain the same.

~~(h)(2) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington DC 20402. The standard industrial classification manual (1987) (Order No. PB 87-100012) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161~~ [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

NEW RULE I INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, 1995, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference refers to the 1988 edition of the USC and Supplement V (1993);

(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the 1995 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, 1995, edition of the Administrative Rules of Montana (ARM).

(2) A copy of state materials incorporated by reference in this chapter is available for public inspection and copying at the Department of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901. Copies of federal materials may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the 10 EPA Regional Offices. Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) (order no. PB 87-100012) and the guidelines on air quality models (revised 1986) (EPA publication no. 450/278-027R), including Supplement A (1987), may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (order no. PB 87-100012).

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

NEW RULE II INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) the Montana Quality Assurance Manual (July 1991 ed.), a Department of Environmental Quality manual specifying sampling and data collection, recording, analysis and transmittal requirements;

(b) the United States Environmental Protection Agency Quality Assurance Manual (Vol. I, EPA/600/R-94/038a, revised April 1994; Vol. II, EPA/600/R-94/038b, revised April 1994, Vol. III, EPA/600/4-77/027b, revised August 1988; Vol. IV, EPA/600/R-94/038d, revised April 1994; and Vol. V, EPA/600/R-94/038e, revised April 1994), a federal manual specifying sampling and data collection, recording, analysis and transmittal requirements;

(c) Methods of Air Sampling and Analysis, Third Edition (1989), Method No. 204, determination of fluoride content of the atmosphere and plant tissues (semi-automated method), a nationally recognized document specifying field and laboratory analytic procedures;

(d) 40 CFR Part 50, including Appendices A through K, specifying the national ambient air quality standards and ambient air quality monitoring reference methods;

(e) 40 CFR Part 53, specifying ambient air monitoring reference methods and equivalent methods; and

(f) 40 CFR Part 58, including Appendices A through G, specifying criteria and requirements for ambient air quality monitoring and reporting.

(2) [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

NEW RULE III INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR 81.327, providing attainment status designation for Montana pursuant to section 107 of the Federal Clean Air Act;

(b) "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988), specifying methods for estimating visibility impairment.

(2) [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

NEW RULE IV INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 261, identifying and defining hazardous wastes.

(2) [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

NEW RULE V INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR Part 60, Appendix A, Method 9, which is the

reference method for visual determination of the opacity of emissions from stationary sources, including the determination of plume opacity by qualified observers, and which includes procedures for training and certification of observers and procedures used in the field for determining plume opacity; and

(b) 40 CFR 60.195, specifying test methods and procedures for primary aluminum reduction plants.

(2) [NEW RULE I] lists the addresses for obtaining copies of the above-references materials.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

NEW RULE VI INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 60, subpart AAA, establishing criteria and procedures for testing particulate emissions and the air-to-fuel ratio for wood stoves and furnaces.

(2) [NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

3. The proposed amendments and adoptions are necessary to update the incorporations by reference and other statutory references contained in the air quality rules to the most recent editions of the Code of Federal Regulations, the United States Code, the Administrative Rules of Montana and the Montana Code Annotated. The board is also proposing substantive amendments to ARM 16.8.1120 and 1429, so the updates to the incorporations by reference in ARM 16.8.1120 and 1429, which are not included in this notice, are included in MAR Notice 17-020, which is being filed simultaneously with this notice.

Pursuant to House Joint Resolution No. 5 (1995), the board is also proposing to delete language that is duplicated in several subchapters of the air quality rules, regarding inspection and copying of documents. The board is proposing New Rule I to provide one rule for ARM Title 16, chapter 8, specifying the editions of the Code of Federal Regulations, Montana Code Annotated, United States Code and Administrative Rules of Montana incorporated by reference, and otherwise referred to, in the air quality rules and specifying procedures for inspection and copying of all materials incorporated by reference in the chapter.

The board proposes to correct incorrect citations to 15-32-102, MCA, in ARM 16.8.1601.

The board proposes to combine some of the existing incorporations by reference into New Rules II through VI, to be placed in subchapters 8, 10, 13, 15 and 16, respectively. The board also proposes to make several nonsubstantive amendments for consistency, to delete unnecessary language and to conform the language of the rules to present rule drafting requirements.

4. Interested persons may submit their data, views, or

arguments concerning the proposed actions, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than May 25, 1996.

5. If a person who is directly affected by the proposed actions wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than May 25, 1996.

6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 250.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of 17.30.640, 17.30.716, 17.30.1601, pertaining to water quality.	))))))	NOTICE OF PROPOSED REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED (Water Quality)

To: All Interested Persons

1. On June 21, 1996, the board proposes to repeal the above referenced rules.

2. The rules proposed to be repealed were proposed for transfer at page 493, 1996 Montana Administrative Register, Issue No. 4.

Their current rule numbers, the pages in the Administrative Rules of Montana on which they are found, the statutes that authorize repeal, and the statutes the rules implement, are as follows:

Title 17 Rule Number	Title 16 Rule Number	Page Number	Authorizing Statute	Statute Implemented
17.30.640	16.20.634	16-970	75-5-201, 75-5-301	75-5-301
17.30.716	16.20.713	16-982.4	75-5-301, 75-5-303	75-5-303
17.30.1601	16.20.102	16-891	75-5-201	75-5-611

3. The repeal of the rules is necessary to comply with HJR 5 (1995 Legislative Session) and the directive of Governor Racicot to repeal unnecessary rules and thereby reduce rules by at least 5%. The reasons that the repealed rules are unnecessary is as follows:

17.30.640 - This rule, initially adopted in 1972, authorizes surface water mixing zones in accordance with the department's written implementation policy. That policy has been superseded by Title 17, Chapter 30, Subchapter 5 (formerly Title 16, Chapter 20, Subchapter 18), which comprehensively regulates establishment of mixing zones.

17.30.716 - This rule was adopted in 1994 to comply with 75-5-301(5)(c), MCA, which required the Board to adopt criteria for determining activities that cause non-significant degradation. Chapter 501, Laws of 1995, establish in statute (75-5-317, MCA) all the criteria contained in ARM 17.30.716.

17.30.1601 - This rule, adopted initially in 1972, establishes a water quality enforcement procedure. In Chapter 504, Laws of 1995, the Legislature established a comprehensive enforcement procedure that superseded the procedure established by this rule. The rule is therefore no longer necessary.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeals, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than May 25, 1996.

5. If a person who is directly affected by the proposed repeals wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than May 25, 1996.

6. If the agency receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons, based on more than 250 persons affected by the water quality regulatory program.

BOARD OF ENVIRONMENTAL REVIEW

By _____
CINDY B. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I regarding temporary water standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River.	))))))	NOTICE OF SUPPLEMENTAL COMMENT PERIOD

(Water Quality)

To: All Interested Persons

1. On August 24, 1995, on page 1652 of the Montana Administrative Register, Issue No. 16, and October 26, 1995, on page 2211 of the Montana Administrative Register, Issue No. 20, the Board gave notice of proposed rule to establish temporary water quality standards for four streams or stream segments near Cooke City. At the December 7, 1995, hearing, commenting parties disagreed whether the rule should be adopted. The Board requested several of the parties to engage in discussions to reach a mutually acceptable resolution of the issues. The parties have been negotiating and it appears probable that they will be able to reach agreement. If agreement is reached, the mechanism for implementing that agreement will be a consent decree entered in an enforcement action to be filed by the Department of Environmental Quality. Pursuant to the Department's enforcement policy, the proposed consent decree would be subject to a 30-day public comment period before it is entered by the court.

The parties anticipate that, if an acceptable consent decree is entered, the Board would not adopt temporary standards. The Board is interested in the public's view of whether, if a consent decree is negotiated, the Board should decline to adopt temporary standards as proposed or in a modified form. Therefore, in order to provide for public comment, the Board is reopening the public comment period on the proposed temporary standard rule for the purpose of accepting comment on whether the rule should be adopted or whether the consent decree eliminates the need for the temporary standards rule.

A consent decree has not been fully agreed upon; but, if one is agreed upon, it should be available in May, 1996. Persons who wish to receive a copy of the proposed consent decree, when it is available, may receive it by sending a request to Leona Holm, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. The Board anticipates that a proposed consent decree will be available at least 30 days prior to the close of the supplemental comment period on the

proposed rule. The comment period on the consent decree would then run concurrent with the comment period on the proposed rule.

To facilitate this process, the Board will consider comments on the consent decree as comments on the proposed temporary standards rule as well. Interested persons may therefore comment on both the consent decree and the proposed rule in one comment letter.

2. Interested persons may submit their views or arguments concerning the proposed rule, in writing, to Leona Holm, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, no later than June 26, 1996. To be guaranteed consideration, the comments must be postmarked on or before that date.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new RULE I, the proposed amendment of ARM 24.11.315, 24.11.316, 24.11.318, 24.11.325 and 24.11.820; and the proposed repeal of ARM 24.11.332, 24.11.821 and 24.11.825, all related to unemployment insurance case procedures and employment status issues	NOTICE OF PUBLIC HEARING ON PROPOSED RULES AMENDING PROCEDURES IN UNEMPLOYMENT INSURANCE CASES AND CREATING A UNIFORM PROCESS FOR DETERMINING EMPLOYMENT STATUS [INDEPENDENT CONTRACTOR] ISSUES

TO ALL INTERESTED PERSONS:

1. On May 17, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption, amendment and repeal of rules related to unemployment insurance employment status [independent contractor] matters.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the Department by not later than 5:00 p.m., May 10, 1996, to advise us of the nature of the accommodation you are requesting. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt a new rule as follows:

RULE I DETERMINATION OF EMPLOYMENT STATUS, INCLUDING THAT OF INDEPENDENT CONTRACTOR (1) Disputes regarding the employment status of an individual for unemployment insurance purposes, including whether that individual is acting as an independent contractor, are regulated by the provisions contained in [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

(2) The test for determining whether an individual is acting as an independent contractor for unemployment insurance purposes is that found at [RULES IX, X and XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

AUTH: 39-51-302, MCA; IMP: 39-51-201, MCA
REASON: It is reasonably necessary to adopt this proposed rule in order to achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all

employment status issues which come before it. This proposed rule permits independent contractor issues arising in unemployment insurance matters to be resolved by the Independent Contractor Central Unit in a manner consistent with independent contractor issues arising under other Department statutes.

This rule is being adopted in conjunction with proposed amendments to and repeal of employment status related rules in the areas of workers' compensation, wage claims and procedures for issuing employment status determinations. This simultaneous adoption will result in one convenient, simple process applicable to all employment status questions brought before the Department.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new matter underlined, deleted matter interlined)

24.11.315 APPEAL OF DEPARTMENT DETERMINATIONS (1) An interested party appealing a department decision, determination, or redetermination under 39-51-1109 or 39-51-2402, MCA, must file with the department a written notice of appeal within 10 days after the decision was mailed to the interested party's last known address.

(a) If the appeal is of an independent contractor central unit (ICCU) determination provided for at [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)], the appeal must be filed with the ICCU.

(2) The notice of appeal should ~~must~~ contain reasons for the appeal. Appeal forms, known as UI-214, may be used and are available at local offices.

(3) The notice of appeal, other than that referenced in ARM 24.11.315(1)(a), must be filed at a local office or at the department's office in Helena either in person or by mail.

AUTH: Sec. 39-51-301 and 39-51-302 MCA
IMP: Sec. 2-4-201 and 39-51-2407 MCA

24.11.316 TRANSFER OF FILES TO ~~APPEALS~~ HEARINGS BUREAU (1) After receiving a notice to appeal a department determination or redetermination on benefits, the benefits bureau sends the administrative file to the ~~appeals~~ hearings bureau of the department.

(2) Upon receiving a notice to appeal a department determination or redetermination on tax matters, the contributions bureau sends a copy of relevant evidence in the administrative record to all interested parties and to the ~~appeals~~ hearings bureau, but retains the administrative file.

(3) Remains the same.

AUTH: Sec. 39-51-301 and 39-51-302 MCA
IMP: Sec. 39-51-1109, 39-51-2403 and 39-51-2407 MCA

24.11.318 TELEPHONE HEARINGS (1) Any conference, prehearing, or hearing may be held by telephone conference call.

(~~2~~a) An in-person tax hearing or conference may be

scheduled in Helena if a party requests in writing such a hearing either at least ~~5~~ 14 days before the scheduled telephone hearing or at the pre-hearing conference.

(b) An in-person benefits hearing or conference may be scheduled in Helena if a party requests in writing such a hearing at least 5 days before the scheduled telephone hearing.

(3) Remains the same in text but is renumbered (2).

(4) Remains the same in text but is renumbered (3).

AUTH: Sec. 39-51-301 and 39-51-302 MCA
IMP: Sec. 39-51-1109, 39-51-2403 and 39-51-2407 MCA

24.11.325 PREHEARING CONFERENCE FOR TAX HEARINGS

(1) Remains the same.

(2) All parties, including the department, are notified of the prehearing conference at least ~~10~~ 20 days before the conference is scheduled.

(3) Remains the same.

(4) Remains the same.

AUTH: Sec. 39-51-302 MCA
IMP: Sec. 39-51-1109 and 39-51-2403 MCA

24.11.820 DETERMINATION OF INDEPENDENT CONTRACTOR--DEPARTMENT PROCEDURES (1) As provided in 39-51-201, MCA, the following two-part test is used to determine whether an individual ~~worker~~ is an independent contractor or an employee:

(a) whether an individual ~~worker~~ is and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) whether an individual ~~worker~~ is engaged in an independently established trade, occupation, profession, or business.

(2) For purposes of this rule ~~and ARM 24.11.821 and 24.11.825~~, "individual ~~worker~~" means an worker ~~individual~~ who renders service in the course of an occupation, and "employing unit" means the individual or other legal entity as described in the definition of "employing unit" in 39-51-201, MCA, that hired one or more ~~workers~~ individuals.

(3) To determine whether an independent contractor or employment relationship exists, the department may:

(a) review written contracts between the individual and the employing unit;

(b) interview the ~~worker~~ individual, co-workers, or the employing unit;

(c) obtain statements from third parties;

(d) examine the books and records of the employing unit;

(e) review filing status on income tax returns; and

(fe) make any other investigation necessary to determine if an independent contractor relationship exists.

(4) After investigation, the department may issue an initial written determination on whether an individual ~~worker~~ is an independent contractor. Any person or employing unit aggrieved by this initial determination may request investigation and a ~~re~~determination by the department's independent contractor central unit (ICCU) pursuant to [RULE II

and [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no. 8)] ~~or appeal~~ within 10 days of notice of the initial determination ~~after the determination is mailed~~. ~~Under section 39-51-1109, MCA, any person or employing unit aggrieved by this decision may appeal the redetermination~~.

(a) A party is considered to have been given notice on the date a written notice is personally delivered or 3 days after a written notice is mailed to the party.

(b) The time limits set forth above may be extended for good cause as provided in 39-51-2402(4), MCA.

(5) Thereafter, the process set out in [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)] controls.

AUTH: Sec. 39-51-301 and 39-51-302 MCA
IMP: Sec. 39-51-1103 and 39-51-201 MCA

REASON: It is reasonably necessary to amend these rules in order to achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all employment status issues which come before it. These proposed amendments permit independent contractor issues arising under the Unemployment Insurance Act to be resolved by the Independent Contractor Central Unit in a manner consistent with independent contractor issues arising under other Department statutes.

These rules are being amended in conjunction with the proposed adoption of new rules, proposed amendments to existing rules and repeal of employment status related rules in the areas of workers' compensation, unemployment insurance, and procedures for determining employment status. This simultaneous adoption will result in one convenient, simple process applicable to all employment status questions brought before the Department.

4. The Department of Labor and Industry proposes to repeal the following rules, which may be found at pages 24-623, and 24-692 through 24-694, of the Administrative Rules of Montana:

24.11.332 INDEPENDENT CONTRACTOR APPEALS--SIMILARLY SITUATED EMPLOYEES IMP: 39-51-1109, MCA

24.11.821 DETERMINATION OF INDEPENDENT CONTRACTOR--EVIDENCE OF CONTROL IMP: 39-51-1103 and 39-51-201, MCA

24.11.825 DETERMINATION OF INDEPENDENT CONTRACTOR--INDEPENDENTLY ESTABLISHED BUSINESS IMP: 39-51-1103 and 39-51-201, MCA

Authority to repeal the rules is found at 39-51-301 and 39-51-302, MCA. The grounds for repealing the rules are that the subject matter of ARM 24.11.332 is now covered by [RULE VII, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)] and the subject matter of ARM 24.11.821 and 24.11.825 is now covered by [RULES X and XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Sandra Bay, Bureau Chief
Unemployment Insurance Contributions Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59620-1728

and must be received by no later than 5:00 p.m., May 24, 1996.

6. The Department proposes to make the new rule, amendments and repeals effective July 1, 1996. The Department reserves the right to adopt only portions of the proposed rule, amendments and repeals, or to adopt some or all of the proposed rule, amendments and proposed repeals at a later date.

7. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 1996.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new RULES I, II and III; the proposed amendment of ARM 24.16.7527, 24.16.7531, 24.16.7534 and 24.16.9010; and the proposed repeal of ARM 24.16.1301, 24.16.1302, 24.16.1901 and 24.16.5101, all related to wage claim procedures and employment status issues	) NOTICE OF PUBLIC HEARING) ON PROPOSED RULES AMENDING) THE WAGE CLAIM PROCESS AND) CREATING A UNIFORM PROCESS) FOR DETERMINING EMPLOYMENT) STATUS [INDEPENDENT) CONTRACTOR] ISSUES

TO ALL INTERESTED PERSONS:

1. On May 17, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption, amendment and repeal of rules related to employment status issues, including that of independent contractor, which arise in the context of Montana's Wage Payment Act, Sections 39-3-201, et seq., MCA, and Montana's Prevailing Wage Act, Sections 18-2-401, et seq.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the Department by not later than 5:00 p.m., May 10, 1996, to advise us of the nature of the accommodation you are requesting. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt the following new rules:

RULE I WAGE COMPLAINTS AND INVESTIGATIONS (1) The employee wage complaint is one basis for enforcement of Montana's wage laws. Special forms are provided by the department for the purpose of filing wage complaints.

(2) When the department receives a complaint, it is analyzed to determine its validity and whether the employee is covered by the law. If accepted, the complaint is assigned to a compliance specialist who then contacts the named company or employer to commence the investigation.

(3) Investigations may occur even if no complaint is filed. The department may, on a spot check basis, inspect payroll and personnel records, and conduct interviews to ensure

compliance with wage laws.

(4) If a substantial number of computations are needed to determine the amount of wages due, the department may request the employer to make the computations. The employer's computations are subject to department approval.

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-209 and 39-3-210 MCA

RULE II PAYMENT OF WAGES AND PENALTIES (1) Whenever the department determines that wages and penalty, if any, are due, it will advise the employer regarding the method of payment. The department may require payment in either the department's or the claimant's name. The department may also require that payment be by money order, certified check, or other negotiable instrument.

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-201 et seq. MCA

REASON: It is reasonably necessary to adopt these proposed rules in order to bring all rules regarding the wage claim process into one subchapter. These rules replace ARM 24.16.1901 and 24.16.5101, which are being repealed.

RULE III PROCEDURE FOR ISSUING WAGE CLAIM DETERMINATIONS REGARDING EMPLOYMENT STATUS, INCLUDING THAT OF INDEPENDENT CONTRACTOR (1) Disputes regarding the employment status of an individual for wage claim purposes, including whether that individual is acting as an independent contractor, are regulated by the provisions contained in [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

(2) The test for determining whether an individual is acting as an independent contractor for wage claim purposes is that found at [RULES IX, X and XI, MAR notice no. 24-35-91, April 25, 1996 (issue no. 8)].

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-201 et seq. MCA

REASON: It is reasonably necessary to adopt this proposed rule in order to achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all employment status issues which come before it. This proposed rule permits independent contractor issues arising under the Wage Payment Act and the Prevailing Wage Act to be resolved by the Independent Contractor Central Unit in a manner consistent with independent contractor issues arising under other Department statutes.

This rule is being adopted in conjunction with proposed amendments to and repeal of employment status related rules in the areas of workers' compensation, unemployment insurance, and procedures for determining employment status issues. This simultaneous adoption will result in one convenient, simple process applicable to all employment status questions brought before the Department.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new matter underlined, deleted matter interlined)

24.16.7527 EMPLOYER RESPONSE TO CLAIM (1) A claim is commenced when a letter is mailed to the employer by an authorized representative of the commissioner notifying the employer of the claim.

(2) An employer must file a written response to a claim. The response must either be on the form provided by the department or presented in a similar format.

(3) To be timely, the employer's written response must be postmarked or delivered to the department by the date specified by the department. Upon timely request, and for good cause shown, the department may allow additional time for response.

(4) In the event the employer's response contains an allegation that the wage claimant is an independent contractor, a partner, part of a joint venture, or any other employment status other than that of employee, the employment status issue will be referred to the department's independent contractor central unit for determination pursuant to [RULE III].

(~~4~~5) Failure of the employer to timely respond to a claim will result in the entry of a determination adverse to the employer.

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-209 and 39-3-210 MCA

24.26.7531 DETERMINATION (1) Following the expiration of the time for an employer to respond to a claim, the department will make a written determination of the wages and penalty owed, if any.

(2) The written determination will incorporate by reference any determination of the department's independent contractor central unit regarding the employment status of the wage claimant.

(~~2~~3) A copy of the written determination will be mailed to each party and attorneys of record at their last known address.

(~~3~~4) Failure of the employer to timely respond to a claim will result in the entry of a determination adverse to the employer.

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-209 and 39-3-210 MCA

24.26.7534 REQUEST FOR REDETERMINATION (1) A party who has received an adverse decision may request a redetermination. If the party disagrees with an employment status determination, that issue should be raised in the request for redetermination. However, the redetermination will be limited to issues other than the employment status of the wage claimant. If an employment status issue is raised, it will be reserved for the formal hearing referenced in ARM 24.16.7537.

AUTH: Sec. 39-3-202 and 39-3-403 MCA
IMP: Sec. 39-3-209 MCA

24.16.9010 *PROCEDURES FOR ENFORCING THE ACT* (1) If, after investigation of a prevailing wage complaint, the department determines that the standard prevailing wage rate is not being paid, the commissioner may file wage claims on behalf of all employees not properly paid.

(2) In the event the investigation includes an employment status question, that issue will be referred to the department's independent contractor central unit for determination pursuant to [RULE III].

(~~2~~1) The wage claim(s) will be heard by a department hearings officer. Any party, including the department, aggrieved by the decision of the hearings officer may then appeal to district court ~~the board~~.

(~~3~~4) In the event the department determines no wage claim should be filed, the complaining party may instigate a review of that decision by a department hearings officer. Any party aggrieved by the decision of the hearings officer may then appeal to district court ~~the board~~.

AUTH: Sec. 2-4-201 and 18-2-431 MCA
IMP: Sec. 18-2-407, 18-2-409, 39-3-211 and 39-3-216 MCA

REASON: It is reasonably necessary to amend these rules in order to achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all employment status issues which come before it. These proposed amendments permit independent contractor issues arising under the Wage Payment Act and the Prevailing Wage Act to be resolved by the Independent Contractor Central Unit in a manner consistent with independent contractor issues arising under other Department statutes.

These rules are being amended in conjunction with the proposed adoption of new rules, proposed amendments to existing rules and repeal of employment status related rules in the areas of workers' compensation, unemployment insurance, and procedures for determining employment status. This simultaneous adoption will result in one convenient, simple process applicable to all employment status questions brought before the Department.

ARM 24.16.9010 is also being amended to reflect the 1993 statutory amendment regarding appeals of prevailing wage cases. Administrative determinations regarding prevailing wage are now appealed directly to district court rather than to the Board of Personnel Appeals.

4. The Department of Labor and Industry further proposes to repeal the following rules, which may be found at pages 24-1031, 24-1051 through 24-1052, and 24-1151 of the Administrative Rules of Montana:

24.16.1301 *INDIVIDUAL CONTRACTOR*
IMP: 39-3-404 and 39-3-405, MCA
24.16.1302 EMPLOYER-EMPLOYEE RELATIONSHIP
IMP: 39-3-404 and 39-3-405, MCA

24.16.1901 INVESTIGATIONS AND INSPECTIONS
IMP: 39-3-407, MCA
24.16.5101 PAYMENT OF BACK WAGES
IMP: 39-3-201, MCA

Authority to repeal these rules is found at 39-3-202, MCA. The grounds for repealing these rules are that the subject matter of ARM 24.16.1301 and 24.16.1302 will be covered by [RULES IX, X and XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)], the subject matter of ARM 24.16.1901 will be covered by [RULE I] and the subject matter of ARM 24.16.5101 will be covered by [RULE II].

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John Andrew, Bureau Chief
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., May 24, 1996.

6. The Department proposes to make the new rules, amendments and repeals effective July 1, 1996. The Department reserves the right to adopt only portions of the proposed rules, amendments and repeals, or to adopt some or all of the proposed rules, amendments and repeals at a later date.

7. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 1996.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new RULE I, the proposed amendment of ARM 24.2.101, 24.29.201, 24.29.205, 24.29.206, 24.29.207 and 24.29.215; and the proposed repeal of ARM 24.29.202 through 24.29.204 and 24.29.208 through 24.29.210, all related to procedure in workers' compensation matters	NOTICE OF PUBLIC HEARING ON PROPOSED RULES AMENDING WORKERS' COMPENSATION RULES AND CREATING A UNIFORM PROCESS FOR DETERMINING EMPLOYMENT STATUS [INDEPENDENT CONTRACTOR] ISSUES

TO ALL INTERESTED PERSONS:

1. On May 17, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption, amendment and repeal of procedural rules related to workers' compensation, occupational disease, and employment status [independent contractor] matters.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the Department by not later than 5:00 p.m., May 10, 1996, to advise us of the nature of the accommodation you are requesting. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt a new rule as follows:

RULE I PROCEDURE FOR ISSUING WORKERS' COMPENSATION DETERMINATIONS REGARDING EMPLOYMENT STATUS, INCLUDING THAT OF INDEPENDENT CONTRACTOR (1) Disputes regarding the employment status of an individual for workers' compensation purposes, including whether that individual is acting as an independent contractor, are regulated by the provisions contained in [RULES I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no. 8)].

(2) The test for determining whether an individual is acting as an independent contractor for workers' compensation purposes is that found at [RULES IX, X and XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

(3) Notwithstanding the provisions of [RULE I(1)], an individual may apply to the department for an exemption from the workers' compensation act pursuant to the provisions contained in [Rules I through V, MAR notice no. 24-29-88, March 21, 1996 (issue no. 6)].

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-120 and 39-71-415 MCA

REASON: It is reasonably necessary to adopt this proposed rule in order to achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all employment status issues which come before it. This proposed rule permits independent contractor issues arising under the Workers' Compensation Act to be resolved by the Independent Contractor Central Unit in a manner consistent with independent contractor issues arising under other Department statutes. This proposed rule also identifies and references the separate process used for granting independent contractor exemptions.

This rule is being adopted in conjunction with proposed amendments to and repeal of employment status related rules in the areas of unemployment insurance, wage claims, and procedures for determining employment status issues. This simultaneous adoption will result in one convenient, simple process applicable to all employment status questions brought before the Department.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new matter underlined, deleted matter interlined)

24.2.101 INCORPORATION OF MODEL RULES (1) The Department of Labor and Industry ~~of each of its Divisions~~ has adopted the ~~M~~model Rrules proposed by the Attorney General by reference to such rules as stated in ARM 1.3.205 ~~ARM~~ through ARM 1.3.23~~4~~3 with the following exceptions~~:~~.

(a) Model r~~R~~ule 25(1)(a) (ARM 1.3.23~~+~~0(1)(a) ~~ARM~~) general provisions, subpoenas ~~and depositions~~, is amended to read as follows:

"(i) Upon request of any party appearing, the agency shall issue subpoenas for witnesses or subpoenas duces tecum. Except as otherwise provided by statute, rule or regulation, witness fees and mileage shall be paid by the party requesting the issuance of the subpoena. ~~Section 2-4-104 MCA~~

(ii) A party may request from the agency an order that the testimony of a material witness be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes, rules or regulations." ~~Section 2-9-301(1) MCA~~

(b) Model r~~R~~ule 19 (ARM 1.3.22~~4~~3 ~~ARM~~), contested cases, proposed orders, is amended to read as follows:

"If a majority of the officials of an agency who are to render the final order were not present at the hearing of a contested case or have not read the record, a proposed order, if adverse to a party to the proceeding other than the agency, including findings of fact and conclusions of law, shall be

served upon the parties. An opportunity to file exceptions, present briefs and make oral argument to the officials who are to render the decision shall be granted to all parties adversely affected. If no appeal is taken within ~~twenty (20) days~~ the time allotted by law, the decision of the hearing examiner shall be final."

(2)(a) The reason for the amendment to model ~~R~~rule 25 is that in instances involving claimants for unemployment insurance benefits, the U.S. department of labor allows the department ~~Division of Employment Security~~ to pay witness fees.

(b) The reason for the amendment to model rule 19 is to allow the decision of the appointed hearing examiner to be the final order.

(3) Various programs administered by the department have special procedural rules required or permitted by the underlying legislation. In those programs which have special procedural rules that conflict with the model rules, the special procedural rules of the program supersede the general procedural rules of the department. Entities which are attached to the department for administrative purposes only adopt rules separately and are not bound by these general procedural rules.

AUTH: Sec. 2-4-110 and 2-4-201 MCA
IMP: Sec. 2-4-201 MCA

24.29.201 INTRODUCTION (1) The purpose of this subchapter is to ensure compliance with the workers' compensation and occupational disease acts administered by the department. The department strives to accomplish this purpose through education, consensus building, and dedication to customer service.

~~(1)(2) The rules in this subchapter describe the procedures followed by the workers' compensation division in providing for public participation in decision making; adopting, amending or repealing division rules; issuing declaratory rulings; issuing orders; providing for administrative review of adverse actions; hearing contested cases; issuing subpoenas; providing for representation; and procedures for service.~~

~~(2) The workers' compensation division is administratively attached to the department of labor and industry and in accordance with that status is obliged to publish organizational, procedural, and substantive rules used to exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.~~

~~(3) The rules in this subchapter apply to the workers' compensation division administration of statutory provisions and substantive rules under:~~

~~(a) workers' compensation act, Title 39, Cchapter 71;~~

~~(b) occupational disease act, Title 39, chapter 72;~~

~~(c) silicosis benefits law, Title 39, chapter 73;~~

~~(d) occupational safety act, Title 50, chapter 71;~~

~~(e) safety in mines other than coal mines, Title 50, chapter 72;~~

~~(f) safety in coal mines, Title 50, chapter 73;~~

~~(g) safety with boilers and steam engines, Title 50, chapter 74;~~

~~(h) safety with hoisting engines, Title 50, chapter 76, and~~

~~(i) crime victims' compensation act, Title 53, chapter 9.~~

(~~4~~2) Except as noted in ARM 24.2.101, the ~~Some~~ procedural rules ~~in~~ applicable to this subchapter ~~adopt and incorporate by reference~~ are the attorney general's model procedural rules found in ARM 1.3.10~~1~~2 and 1.3.205 through 1.3.233. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Center, 215 North Sanders, P.O. Box 201401, Helena, MT 59604, ~~phone~~ telephone (406) 444-2026.

(~~5~~3) ~~Any individual or group of individuals who want information about anything mentioned in these rules or about anything concerning the workers' compensation division, or want an appointment with the administrator or a bureau chief regarding any matter of concern to those individuals, and under the responsibility of the workers' compensation division, may make arrangements through the administrator's office at 5 South Last Chance Gulch~~ Persons wanting information about these rules or workers' compensation issues may contact the Employment Relations Division, 1805 Prospect, P.O. Box 8011, Helena, Montana ~~59601~~ 59604-8011, telephone ~~444-6518~~ (406) 444-6530.

AUTH: Sec. 2-4-201, 39-71-203 and 39-72-203 MCA
IMP: Title 2, chapters 3 and 4 MCA

24.29.205 ISSUING ~~DIVISION~~ ORDERS (1) ~~"Order" means any decision, rule, direction, requirement, or standard of the division, or any other determination arrived at or decision determining a person's opportunity for benefits or to do business.~~ All orders ~~are~~ issued pursuant to 39-71-116, MCA, must be in writing and signed by a ~~division~~ department employee ~~official delegated with such authority in the division's organizational rule or in writing by the administrator~~.

(2) An order may be issued:

(a) ~~solely~~ as ~~the~~ a result of action initiated by the ~~division~~ department; ~~or~~

(b) as the ~~division~~ department's response to inquiries from the public; ~~or~~

(~~3~~c) ~~An order may issue~~ as a result of ~~division~~ department investigation, mandated statutorily; or

(~~4~~d) ~~An order may issue~~ upon receipt of a petition. ~~A condition precedent to the division issuing an order in this situation is receipt of a petition which must include:~~

~~(a) the name and address of the petitioner;~~

~~(b) a detailed statement of the facts upon which the petitioner requests the division to issue an order;~~

~~(c) the rule, statute or case law under which the request for an order is made; and~~

~~(d) a short, plain statement of petitioner's contentions based upon rule 24.29.205(4)(b) and (c).~~

(~~5~~3) Any ~~division~~ department order may be appealed for administrative review (see rule 24.29.206), or if required statutorily, as a contested case (see rule 24.29.207) or

considered as a mediation case (see rule 24.28.101). Appeals can be made to the workers' compensation court after prior statutory remedies have been exhausted (see rule 24.5.101). However, any party may first seek administrative review of an order, prior to a contested case hearing without affecting that party's statutory remedies.

(4) Department determinations rendered by the independent contractor central unit regarding employment status issues are not considered department orders for purposes of these rules. These determinations are issued pursuant to [Rules I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)].

AUTH: Sec. 2-4-201, 39-71-203 and 39-72-203 MCA
IMP: Sec. 2-4-201, 2-4-202, 39-71-116, 39-71-120, 39-71-415 and 39-72-203 MCA

24.29.206 ADMINISTRATIVE REVIEW (1) The ~~workers' compensation division administrator or his designee~~ department shall conduct an administrative review of any ~~division~~ department order, other than employment status determinations referenced in ARM 24.29.205(4), ~~construed by a party in interest to be adverse to his interest~~ for the purpose of resolving the case and avoiding an unnecessary hearing, upon:

(a) receipt of a petition for administrative review which ~~must conform to the requirements for petitions in rule 24.29.205~~ should contain:

(i) the name and address of the petitioner;

(ii) a short, plain statement of the petitioner's contentions; and

(iii) a statement of the resolution the petitioner is seeking; or

(b) receipt of a ~~petition for a contested case hearing and the parties' joint written waiver of~~ written mutual request by all of the parties to the dispute to agree to waive the formal contested case proceedings until an administrative review is conducted in accordance with 2-4-603, MCA.

~~(2) An administrative review shall be conducted with the purpose of resolving the case and avoiding an unnecessary hearing.~~

(~~3~~2) An administrative review caused by a petition pursuant to rule 24.29.206(1)(a) includes:

(a) at the discretion of the ~~party in interest~~ petitioner, an informal conference with the ~~division~~ department by telephone or ~~person to~~ in person at the ~~division~~ department office in Helena; and

(b) a review by the ~~administrator or his designee~~ department of all relevant facts and applicable laws involved in the action by the ~~division~~ department. Such a review ~~will~~ is not ~~be~~ subject to the rules of civil procedure or the rules of evidence.

(c) Upon completion of the informal conference and review, the department shall issue a notice to the parties in a timely manner.

(~~4~~3) An administrative review caused by a petition and waiver of formal proceedings pursuant to rule 24.29.206(1)(b)

must be conducted as an informal proceeding in accordance with the provisions of 2-4-604, MCA.

(~~5~~4) The ~~workers' compensation division administrator~~ department may rescind, alter or amend any action at any time during the administrative review, in which case a contested case hearing will not be held unless a party ~~in interest~~ does not concur with the ~~order~~ notice and requests ~~that~~ the hearing be held.

AUTH: Sec. 2-4-201, 39-71-203 and 39-72-202 MCA
IMP: Sec. 39-71-204 and 39-72-402 MCA

24.29.207 CONTESTED CASES (1) ~~A contested case under Title 39, Chapter 71, MCA, involving a dispute by a claimant or an insurer concerning any benefits provided under that chapter is administered in accordance with rules authorized by the workers' compensation court under ARM Title 2, chapter 52, subchapter 2.~~

~~(2) A contested case under Title 39, chapter 71, MCA, involving any disputed determination of legal rights, duties or privileges other than those in rule 24.29.207(1) or (3) is administered by the workers' compensation division in accordance with rule 24.29.207(6).~~ Parties having a dispute involving legal rights, duties or privileges, other than disputes over benefits available directly to a claimant under Title 39, chapters 71 and 72, MCA, must bring the dispute to the department for a contested case hearing. Such disputes ~~cases~~ include but are not limited to:

(a) disputes regarding attorneys' fee agreements ~~in accordance with section~~ (39-71-613, MCA);

~~(b) disputes regarding insurance premium payments to the state compensation insurance fund;~~

~~(c) disputes regarding state compensation insurance fund premium rates;~~

(b~~d~~) disputes regarding ~~wage equivalency determinations made by the division~~ the value of work paid for in property other than money (39-71-303, MCA);

(c~~e~~) disputes regarding applications for exemption of independent contractors and employment status determinations ~~not to be bound by workers' compensation coverage pursuant to section~~ (39-71-401, MCA);

~~(f) disputes regarding applications by corporate officers not to be bound by workers' compensation coverage pursuant to section 39-71-410, MCA;~~

(d~~g~~) disputes ~~concerning~~ regarding certification as ~~of~~ vocationally handicapped ~~persons~~ under Title 39, chapter 71, part 9, MCA;

(e~~h~~) disputes ~~concerning~~ regarding payment of benefits or liability involving the subsequent injury fund;

(f~~i~~) disputes ~~concerning~~ regarding payments to medical providers when benefits available directly to claimants are not an issue (ARM 24.29.1404);

(g) disputes regarding the waiver of the one year statute of limitations up to an additional 24 months (39-71-601, MCA);

(h) disputes regarding the medical condition of a claimant

when the department has been requested to order an independent evaluation (39-71-605, MCA);

(i) disputes regarding suspension of payments pending receipt of medical information (39-71-607, MCA);

(j) disputes regarding requests for orders requiring insurers to pay benefits pending a termination hearing (39-71-610, MCA);

(k) disputes regarding department orders concerning palliative or maintenance care under 39-71-704, MCA;

(l) disputes regarding the renewal, revocation or suspension of certification as a managed care organization (39-71-1103 and 39-71-1105, MCA); and

(m) disputes regarding applications to modify a managed care organization plan (39-71-1103 and 39-71-1105, MCA); and

(n) disputes regarding whether a claimant is suffering from an occupational disease, and if so, apportionment under the occupational disease act (Title 39, chapter 72, part 6, MCA).

(~~3~~2) A contested case ~~under Title 39, Chapter 71, MCA,~~ concerning employment classifications assigned to an employer by an insurer is administered by the classification review ~~and rating~~ committee in accordance with 33-16-1012, MCA.

(~~4~~3) A contested case under Title 39, chapters 71, 72 or 73, other than of the type referenced in 29.29.207(2), ~~or Title 53, chapter 9, MCA,~~ is administered by the ~~workers' compensation division~~ department in accordance with ARM 24.2.101 and 24.29.201(2) ~~24.29.207(6)~~.

~~(5) A contested case under Title 50, chapters 71, 72, 73, 74 or 76 is administered by the workers' compensation division in accordance with rule 24.29.207(6).~~

~~(6) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rules 8 through 21 and 28 found in ARM 1.3.212 through 1.3.225 and in ARM 1.3.233, which set forth contested case procedures for the division.~~

(~~7~~4) The workers' compensation court is an appeal court for final ~~decisions~~ orders, other than employment status decisions, made by the department ~~workers' compensation division~~ pursuant to rule 24.29.207(1), (2) and (~~4~~3). Final decisions regarding employment status issued pursuant to ARM 24.29.207(1)(c) and [Rules I through XI, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)] are appealable to the board of labor appeals pursuant to [Rule VIII, MAR notice no. 24-35-91, April 25, 1996 (issue no.8)]. ~~Final decisions pursuant to rule 24.29.207(5) are appealed in accordance with Title 2, chapter 4, part 7 MCA.~~

AUTH: Sec. 2-4-201, 39-71-203 and 39-72-203 MCA
IMP: Title 2, chapter 6, part 6, 39-71-204, 39-71-415, 39-71-2905, 39-72-611 and 39-72-612 MCA

24.29.215 TIME LIMITS (1) A party seeking administrative review under ARM 24.29.206 must make a written request for administrative review to the ~~division~~ department within ~~ninety~~ 30 days of notice of adverse action.

(2) A party seeking a contested case hearing under ARM 24.29.207 must make a written request to the ~~division~~ department

for a contested case hearing within ~~thirty~~ 10 days of notice of the results of an administrative review or within ~~ninety~~ 30 days of notice of adverse action.

(3) A party seeking judicial review of a final order of the ~~division~~ department after a contested case hearing must file a petition with the workers' compensation court within 30 days after notice of the final order.

(4) A party is considered to have been given notice on the date a written notice is personally delivered or 3 days after a written notice is mailed ~~to him~~. A request for administrative review, contested case hearing~~,~~ or judicial review must be received in the ~~division~~ department or court within the time limits set forth above. The time limits for request for administrative review or contested case hearing may be extended by the ~~division~~ department for good cause.

AUTH: Sec. 39-71-203 and 39-72-203 MCA
IMP: Title 2, chapter 6 and 2-4-702 MCA

REASON: It is reasonably necessary to amend the Department's procedural rules to clarify the scope of ARM 24.2.101. Various programs which the Department administers have special procedures which are based upon statute, and ARM 24.2.101 must be amended to permit such variances. The amendments are also reasonably necessary to make technical corrections to citations and the names of Department divisions, and to make the language in the rules gender-neutral. The remaining rules are related to the workers' compensation and occupational disease programs that were formerly administered by the Division of Workers' Compensation. Amendment of those rules is reasonably necessary to make sure that the wording of the procedural rules does not conflict with other Department program rules by being over- or under-inclusive. The amendments are part of a general revision of ARM Title 24, chapter 29, subchapter 2.

4. The Department of Labor and Industry proposes to repeal the following rules, which may be found at pages 24-2073 through 24-2077, of the Administrative Rules of Montana:

24.29.202 PUBLIC PARTICIPATION
IMP: Title 2, Ch. 3, Part 1, MCA
24.29.203 ADOPTING, AMENDING, AND REPEALING DIVISION RULES
IMP: Title, Ch. 4, Part 3, MCA
24.29.204 ISSUING DECLARATORY RULINGS
IMP: Title 2, Ch. 4, Part 5, MCA
24.29.208 SUBPOENAS
IMP: 2-4-104, MCA
24.29.209 REPRESENTATION
IMP: 2-4-106, MCA
24.29.210 SERVICE
IMP: 2-4-106, MCA

Authority to repeal the rules is found at 2-4-201, MCA and 39-71-203, MCA. The grounds for repealing the rules are (1) the subject matter of each of the rules is covered by ARM 24.2.101; and (2) because the former Division of Workers' Compensation no

longer exists as an administratively attached entity, separate procedural rules are no longer needed. It is reasonably necessary to repeal these rules to avoid confusion and possible inconsistencies with ARM 24.2.101, which provides for procedural rules which are generally applicable to the entire Department of Labor and Industry.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Denny Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., May 24, 1996.

6. The Department proposes to make this proposed rule and these proposed amendments and repeals effective July 1, 1996. The Department reserves the right to adopt only portions of the proposed rule, amendments and repeals, or to adopt some or all of the proposed rule, amendments and repeals at a later date.

7. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 1996.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new RULES I through XI creating one process for determining all employment status issues, including that of independent contractor	) NOTICE OF PUBLIC HEARING) ON PROPOSED RULES CREATING) ONE PROCESS FOR DETERMINING) EMPLOYMENT STATUS [INDEPENDENT) CONTRACTOR] ISSUES

TO ALL INTERESTED PERSONS:

1. On May 17, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of rules related to a centralized process for determining all employment status issues, including that of independent contractor, raised before the Department of Labor and Industry.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the Department by not later than 5:00 p.m., May 10, 1996, to advise us of the nature of the accommodation you are requesting. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt the following new rules:

RULE I DEFINITIONS For the purposes of [RULES I through XI], the following definitions apply:

(1) "Board" means the board of labor appeals.

(2) "Department" means the Montana department of labor and industry.

(3) "Employment status" means the employment relationship between an individual and their employer.

(4) "Hearing" means a contested case hearing conducted by the department's hearings bureau, and may include the tax appeal hearing referenced in 39-51-1109 and 39-71-415, MCA.

(5) "Hiring agent" means the entity which hires an individual to perform services and may include: "employer" as defined in 39-3-201(6), MCA; the individual or other legal entity as described in the definition of "employing unit" in 39-51-201(9), MCA; "employer" as defined in 39-51-202, MCA; "employer" as defined in 39-71-117, MCA; and similar definitions contained in the applicable statutes of agencies which have elected to participate in the independent contractor central

unit.

(6) "Independent contractor central unit" or "ICCU" means the unit located within the department which is responsible for making employment status determinations for the entire department, and any other agency which elects to participate in the ICCU.

(7) "Individual" means someone who renders service in the course of an occupation.

(8) "Similarly situated individuals" means people who render services for an employer under circumstances substantially the same as those under which the subject individual's services were performed.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120 and 39-71-415 MCA

RULE II DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) To determine the employment status of an individual or groups of similarly situated individuals, the department may:

(a) review written contracts between the individual and the hiring agent;

(b) interview and obtain statements from the individual, co-workers and the hiring agent;

(c) obtain statements from third parties;

(d) examine the books and records of the hiring agent;

(e) review filing status on income tax returns; and

(f) make any other investigation necessary to determine employment status.

(2) Determinations regarding employment status must comply with the definitions of an independent contractor found at [RULE IX, X and XI], as well as with existing law on partnership, joint ventures and other employment entities.

(3) Determinations regarding employment status will generally be issued by the department's independent contractor central unit (ICCU).

(4) ICCU determinations regarding employment status must be called "determination" and are separate and distinct from the "orders" defined at ARM 24.29.205.

(5) ICCU determinations regarding employment status are binding on the department and on all other agencies which elect to participate in the department's ICCU, subject to the limitations contained in [Rule III(3)].

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120 and 39-71-415 MCA

RULE III BINDING NATURE OF DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) Written determinations issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department of labor and industry and the jurisdiction of all other agencies which elect to participate in the ICCU. These determinations may

affect a party's liability in matters related to unemployment insurance, the uninsured employers' fund, the underinsured employers' fund, wage and hour issues, state income tax withholding and old fund liability tax.

(2) Neither the department nor any other agency which elects to participate in the ICCU may appeal the ICCU's employment status determination.

(3) If the ICCU's employment status determination is appealed by a non-agency party, the determination is not binding until all appeal rights are exhausted.

(4) Nothing in these rules shall be construed to limit the right of any similarly situated individual to a hearing as provided for in [RULE IV].

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 39-3-212, 39-51-1109, 39-71-120 and 39-71-415 MCA

RULE IV APPEAL OF DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) An ICCU determination regarding employment status may be appealed to the department's hearings bureau for a hearing. The party requesting the appeal shall file a written request with the ICCU within 10 days of notice of the ICCU's determination.

(2) A party is considered to have been given notice on the date a written notice is personally delivered or 3 days after a written notice is mailed to the party. A request for hearing must be received by the ICCU within the time limits set forth above. However, the time limits may be extended by the ICCU for good cause shown.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 2-4-201, 39-3-216, 39-51-1109 and 39-71-415 MCA

RULE V TRANSFER OF FILE TO HEARINGS BUREAU (1) Upon receiving a notice of appeal, the ICCU shall identify and mark all exhibits relied on in making the employment status determination and send copies of its administrative record, including the marked exhibits, to the hearings bureau and to the parties of record.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 2-4-201, 39-3-216, 39-51-1109 and 39-71-415 MCA

RULE VI HEARING ON EMPLOYMENT STATUS ISSUE (1) The appeals referee shall conduct the hearing pursuant to the rules governing unemployment insurance tax appeals, which are found at ARM 24.11.317 through 24.11.319 and ARM 24.11.325 through 24.11.331.

(2) The department and any other agency which has elected to participate in the ICCU may be represented at the hearing by either ICCU staff or the department's legal staff.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 2-4-201, 2-4-611, 39-3-216, 39-51-1109 and 39-71-415

MCA

RULE VII APPEAL REFEREE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON EMPLOYMENT STATUS (1) After the hearing, the appeals referee shall issue findings of fact, conclusions of law and decision affirming, modifying or reversing the ICCU's determination.

(2) The appeals referee's decision must contain a notice of the appeal rights contained in [RULE VIII].

(3) This decision will become the final decision of the department unless appealed by any party pursuant to [RULE VIII].

(4) A final decision by an appeals referee, or of the board pursuant to [Rule VIII], that an individual is an employee is binding on the department and any agency which has elected to participate in the ICCU, as well as on all similarly situated individuals in the employer's business.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 2-4-611, 2-4-623, 39-3-216, 39-51-1109 and 39-71-415 MCA

RULE VIII APPEAL OF FINDINGS, CONCLUSION AND DECISION ON EMPLOYMENT STATUS (1) Unless [RULE VIII(4)] applies, the findings of fact, conclusions of law and decision of the appeals referee may be appealed to the board of labor appeals.

(2) Notice of appeal to the board must be filed with the hearings bureau within 10 days of notice of the appeals referee's decision.

(a) A party is considered to have been given notice of the appeals referee's decision on the date a written notice is personally delivered or 3 days after a written notice is mailed to the party.

(3) If an appeal is filed, the hearings bureau will notify all parties of record and cause the matter to be brought before the board.

(4) If the appeals referee's findings of fact, conclusions of law and decision concerns a determination regarding workers' compensation benefits, an uninsured employers' fund or underinsured employers' fund penalty issue, the appeal will be to the Montana workers' compensation court, pursuant to 39-71-415(2) and 39-71-2401, MCA.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA
IMP: Sec. 2-4-611, 2-4-623, 39-3-216, 39-51-1109, 39-71-415, 39-71-2401 MCA

RULE IX DEFINITION OF INDEPENDENT CONTRACTOR (1) Except as provided in [RULE IX(2)], the following two-part test is used to determine whether an individual is an independent contractor or an employee:

(a) whether the individual is and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) whether the individual is engaged in an independently

established trade, occupation, profession, or business.

(2) For independent contractor determinations made pursuant to 39-71-120, MCA, the above two-part test is augmented by the requirement that the individual also receive "an exemption granted under 39-71-401(3)." Rules regarding the exemption process are located at [MAR notice no. 24-29-88, March 21, 1996 (issue no. 6)].

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA

IMP: Sec. 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3) MCA

RULE X DEFINITION OF INDEPENDENT CONTRACTOR--EVIDENCE OF CONTROL (1) An individual is an employee and not an independent contractor if the hiring agent controls or retains the right to control the way the individual renders services. The following factors must be considered to determine whether control exists:

(a) The individual is required to follow written or oral instructions concerning when, where, or how work is to be done. Although some individuals, because of skill or expertise, work without receiving instructions, they may still be employees if the employer has the right to give instructions on work performance;

(b) The success or continuation of a business depends in great part upon the services performed by the individual;

(c) The hiring agent directs the hiring, supervising, or payment of the individual's assistants;

(d) The relationship between the individual and the hiring agent is on a frequent, recurring basis, even if irregular or part time;

(e) The individual is required to perform services at certain established times;

(f) The work is performed on the business premises of the hiring agent. This factor is especially important if the work could be performed elsewhere;

(g) The hiring agent requires, or has the right to require, the individual to perform services in a certain manner, or in a certain order or sequence;

(h) The hiring agent requires the individual to submit oral or written reports;

(i) The individual is paid based on the time spent doing the work rather than a flat fee;

(j) The individual is paid or reimbursed for travel or other business-related expenses;

(k) The hiring agent furnishes the facilities, tools, materials or other equipment to the individual;

(l) The individual may be discharged at the will of the hiring agent, including the right to discharge for the failure to follow specified rules or methods. A union contract or statute which restricts the right of discharge does not indicate a lack of control;

(m) Training is provided to the individual by the hiring agent;

(n) The individual does not realize a profit or suffer a loss as a result of the services performed; or

(o) The individual is prohibited or restricted from working for others or is required to devote primary attention to the hiring agent.

(2) The above factors are weighed and evaluated depending on the circumstance of each case. A combination of these factors may indicate control or the right to control. Service performed by an individual for pay is considered to be employment until it is shown to the satisfaction of the department that the individual is an independent contractor.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA

IMP: Sec. 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3) MCA

RULE XI DEFINITION OF INDEPENDENT CONTRACTOR--INDEPENDENTLY ESTABLISHED BUSINESS (1) To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession or business. An independently established business may exist if the individual:

(a) has a place of business separate from the hiring agent's place of business;

(b) supplies substantially all of the tools, equipment, supplies, or materials necessary to perform the services;

(c) pays all expenses associated with performing the services, and is not reimbursed by the hiring agent;

(d) has two or more effective contracts to perform services for several different hiring agents;

(e) is paid based on a billing statement or invoice at completion of the services;

(f) performs the services under a written contract that requires complete or partial payment after a certain amount of work is performed, and the contract terminates after a definite time period;

(g) advertises services in telephone books, newspapers, or other media;

(h) files federal or state business tax forms;

(i) has the required customary licenses, registrations or permits to maintain a business;

(j) may realize a profit or suffer a loss from performing the services for the hiring agent. This factor may be shown if the individual:

(i) hires or pays assistants to perform the services;

(ii) performs the services at facilities owned or leased by the individual;

(iii) has continuing or recurring liabilities associated with performing the services; or

(iv) agrees to perform specific jobs for prices agreed upon in advance and pays expenses associated with the performance of the services;

(k) has an independent contractor exemption as required by 39-71-120 and 39-71-401(3), MCA;

(l) may not end the relationship at will without incurring

liability. An independent contractor agrees to complete a specific job, is responsible for its completion, and may be subject to liability for failing to complete the job in accordance with agreed upon specification; or

(m) is not prohibited or restricted from working for others.

(2) The above factors are weighed and evaluated depending on the circumstances of each case. A combination of these factors may indicate that the individual is customarily engaged in an independently established business. Service performed by an individual for pay is considered to be employment until it is shown to the satisfaction of the department that the individual is an independent contractor.

AUTH: Sec. 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203 MCA

IMP: Sec. 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3) MCA

3. It is reasonably necessary to adopt these proposed rules as the Department has received complaints from members of the public concerning the lack of a single process for issuing determinations about employment status. These proposed rules address these concerns and will achieve the Department's goal of establishing a central unit for the consistent, one-time processing of all employment status issues, including that of independent contractor, which come before it. These proposed rules standardize the procedure to be used and the definitions to be applied by the Department in determining independent contractor issues. The proposed new rules also standardize the appeal of these decisions, as much as is permissible under the statutes.

These rules are being adopted in conjunction with proposed amendments to and repeal of employment status related rules in the areas of workers' compensation, unemployment insurance and wage claims. This simultaneous adoption will result in one convenient, simple process applicable to all independent contractor questions brought before the Department.

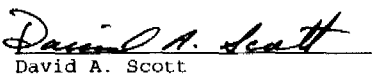
4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Denny Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

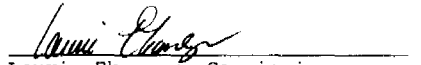
and must be received by no later than 5:00 p.m., May 28, 1996.

5. The Department proposes to make these new rules effective July 1, 1996. The Department reserves the right to adopt only portions of these proposed new rules, or to adopt some or all of the proposed new rules at a later date.

6. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 1996.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of new rules for the resolution of disputes over the administration of the Yellowstone River Compact	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 20, 1996 the Department proposes to adopt new Rules I through Rule VII establishing procedures for the resolution of disputes between Montana and Wyoming on the administration of the Yellowstone River Compact.

2. The proposed new rules provide as follows:

"Rule I PURPOSE AND GOAL (1) The purpose of these rules is to define the dispute resolution process provided for in Article III.F. of the Yellowstone River Compact.

(2) The goal of the dispute resolution process is to encourage joint problem solving and consensus building. It consists of three phases: unassisted negotiation, facilitation, and voting.

(3) Any agreement reached through this process is binding on Montana, Wyoming, and the United States geological survey (USGS).

(4) Either state can initiate the dispute resolution process established in these rules and the other state is obligated to participate in good faith. The issues pursued under this dispute resolution process shall be both substantive and require timely resolution.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule II CONSENSUS (1) In the process of administering the Yellowstone River Compact, the representatives from Montana and Wyoming seek consensus.

(2) Consensus is an agreement that is reached by identifying the interests of Montana and Wyoming and then building an integrative solution that maximizes the satisfaction of as many of the interests as possible. The process of seeking consensus does not involve voting, but a synthesis and blending of alternative solutions.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule III UNASSISTED NEGOTIATION (1) In all situations, the representatives from Montana and Wyoming shall first attempt to seek consensus through unassisted negotiation. The federal representative will not serve as chairperson in the unassisted negotiation process.

(2) During a negotiation process, the representatives from Montana and Wyoming shall identify issues about which they differ, educate each other about their needs and interests, generate possible resolution options, and collaboratively seek a mutually acceptable solution.

(3) To help facilitate negotiations, the representatives from Montana and Wyoming in cooperation with the USGS agree to share technical information and develop joint data bases. Other data sources may also be used.

(4) The USGS shall serve as technical advisor in the two-state negotiations.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule IV FACILITATION (1) If the representatives from Montana and Wyoming are not able to reach consensus through unassisted negotiation, they shall each identify, articulate, and exchange, in writing, the unresolved issues.

(2) The representatives from Montana and Wyoming shall then jointly appoint a facilitator to assist in resolving the outstanding dispute. If the representatives from Montana and Wyoming cannot identify a mutually acceptable facilitator, the representative appointed by the USGS shall appoint a facilitator.

(3) A facilitator, for purposes of this rule, is defined as a neutral third party that shall help the representatives from Montana and Wyoming communicate, negotiate, and reach agreements voluntarily. The facilitator is not empowered to vote or render a decision.

(4) The facilitator shall assist the representatives from Montana and Wyoming in developing appropriate ground rules for each facilitated session including establishing a deadline for completion of the facilitation process, setting an appropriate agenda, identifying issues, collecting and analyzing technical information, developing options, packaging agreements, and preparing a written agreement. The facilitator may meet privately with each representative during the facilitation process.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule V VOTING (1) If the representatives from Montana and Wyoming are unable to reach consensus with the assistance of a facilitator, a dispute may be settled by voting.

(2) The representatives from Montana and Wyoming, along with the representative appointed by the director of the USGS, are each entitled to one vote.

(3) If the USGS representative does not vote in accordance with Article III.F., thenthe director of the USGS will select, with concurrence from Wyoming and Montana, a neutral third party to vote.

(4) If the representative appointed by the director of the USGS is not involved in the steps outlined in Rules III and IV, each state shall have the opportunity to present appropriate information to that representative. This information may be presented through both oral presentations and written documents. All information will be shared with the other state. The representative of the USGS may also consult the facilitator in an attempt to resolve any disputes.

(5) The USGS shall pay the expenses of the

representative appointed by the director of the USGS.

(6) Points of disagreement shall be resolved by a majority vote.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule VI FUNDING (1) The USGS will pay one-half and the states of Montana and Wyoming shall each pay one-quarter of the expenses of the facilitator, which shall not exceed $10,000, unless agreed to by both states and the USGS.

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

Rule VII AMENDMENTS (1) These rules may be amended or revised by a unanimous vote of the commission."

AUTH: 85-20-109, MCA IMP: 85-20-101, MCA Article III.F.

3. Rationale: Historically differences in the interpretation of the Yellowstone River Compact have led to impasse in the implementation of the Compact. The rules are necessary to formally establish the process that Montana and Wyoming will use to address differences in the interpretation of the Compact.

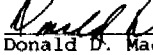
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to Teresa McLaughlin, Department of Natural Resources and Conservation, Water Resources Division, PO Box 201601, Helena, MT 59620-1601. Any comments must be postmarked no later than May 31, 1996.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request for a hearing along with any written comments he has to the above address, postmarked no later than May 31, 1996.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BY: 
Arthur R. Clinch, Director


Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1237, 46.12.1245 and 46.12.1254 pertaining to nursing facilities	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On May 23, 1996 at 1:30 p.m., a public hearing will be held in the Auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1237, 46.12.1245 and 46.12.1254 pertaining to nursing facilities.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 13, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows:

46.12.1222 DEFINITIONS Unless the context requires otherwise, in sub-chapter 12 the following definitions apply:

(1) through (3) remain the same.

(4) "Department" means the Montana department of ~~social and rehabilitation~~ public health and human services or its agents, including but not limited to parties under contract to perform audit services, claim processing and utilization review.

(5) through (13) remain the same.

(14) "Nursing facility services" means nursing facility services provided in accordance with 42 CFR, part 483, subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, part 483, subpart I. The department hereby adopts and incorporates herein by reference 42 CFR, part 483, subparts B and I, which define the participation requirements for nursing facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders,

P.O. Box 4210, Helena, MT 59604-4210. The term "nursing facility services" includes the term "long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Payment for the services listed in this subsection is included in the per diem rate determined by the department under ARM 46.12.1226 or ARM 46.12.1249 and no additional reimbursement is provided for such services. Nursing facility services include but are not limited to the following or any similar items:

(14)(a) through (14)(d) remain the same.

(e) items routinely provided to residents including but not limited to:

(14)(e)(i) through (14)(e)(iv) remain the same.

~~(v) routine incontinence care items appropriate for the resident's individual medical needs;~~

(14)(e)(vi) through (14)(e)(xxi) remain the same in text but are renumbered (14)(e)(v) through (14)(e)(xx).

(xxii~~i~~) personal hygiene items and services, including but not limited to:

(A) bathing items and services, including but not limited to towels, washcloths and soap;

(B) hair care and hygiene items, including but not limited to shampoo, brush and comb;

(C) incontinence care and supplies appropriate for the resident's individual medical needs;

(14)(e)(xxii)(D) through (14)(e)(xxii)(H) remain the same in text but are renumbered (14)(e)(xxi)(D) through (14)(e)(xxi)(H). (14)(e)(xxiii) remains the same in text but is renumbered (14)(e)(xxii).

~~(xxiv) sanitary pads;~~

(14)(e)(xxv) through (14)(e)(xxxi) remain the same in text but are renumbered (14)(e)(xxiv) through (14)(e)(xxx). (14)(g) through (20)remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.1223 PROVIDER PARTICIPATION AND TERMINATION REQUIREMENTS (1) and (1)(a) remain the same.

(b) maintain a current license issued by the department of ~~health and environmental sciences~~ public health and human services under Montana law for the category and level of care being provided, or, if the facility is located outside the state of Montana, maintain a current license under the laws of the state in which the facility is located for the category and level of nursing facility care being provided;

(c) maintain a current certification for Montana medicaid issued by the department of ~~health and environmental sciences~~

public health and human services under applicable state and federal laws, rules, regulations and policies for the category and level of care being provided, or, if the facility is located outside the state of Montana, maintain current medicaid certification in the state in which the facility is located for the category and level of nursing facility care being provided;

(1)(d) through (1)(f) remain the same.

(g) A provider holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department's third party liability unit, as required by 53-6-168, MCA.

(g) and (h) remain the same in text but are renumbered (h) and (i).

~~(i)~~ (j) comply with all applicable federal and state laws, rules, regulations and policies regarding nursing facilities at the times and in the manner required therein, including but not limited to 42 USC 1396r(b)(5) and 1396r(c) (1994 supp.) and implementing regulations, which contain federal requirements relating to nursing home reform. The department hereby adopts and incorporates herein by reference 42 USC 1396r(b)(5) and 1396r(c). A copy of these statutes may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(2) and (2)(a) remain the same.

(3) A provider must provide the department with 30 days advance written notice of termination of participation in the medicaid program. Notice will not be effective prior to 30 calendar days following actual receipt of the notice by the department. Notice must be mailed or delivered to the Department of Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(3)(a) through (3)(c) remain the same.

(4) A provider must notify a resident or the resident's representative of a transfer or discharge as required by 42 CFR 483.12(a)(4), (5) and (6). The notice must be provided using the form prescribed by the department. In addition to the notice contents required by 42 CFR 483.12, the notice must inform the recipient of the recipient's right to a hearing, the method by which the recipient may obtain a hearing and that the recipient may represent herself or himself or may be represented by legal counsel, a relative, a friend or other spokesperson. Notice forms are available upon request from the department. Requests for notice forms may be made to the Department of Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-6-108, 53-6-111, 53-6-113 and 53-6-189, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107,

53-6-111, 53-6-113 and 53-6-168, MCA

46.12.1229 OPERATING COST COMPONENT (1) through (3)(a) remain the same.

(4) The operating cost limit is ~~105%~~ 106% of median operating costs.

(5) and (5)(a) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT (1) through (3) remain the same.

(4) The direct nursing personnel cost limit is ~~116%~~ 117% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score, determined in accordance with ARM 46.12.1232.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.1237 CALCULATED PROPERTY COST COMPONENT (1) This section specifies the method used by the department to calculate the property cost component for a specific provider for rate years beginning on or after July 1, ~~1995~~ 1996. Such property cost component is expressed in dollars and cents per patient day.

(2) through (2)(d) remain the same.

(e) "~~1995~~ 1996 property component" means the provider's calculated property component determined for rate year ~~1995~~ 1996 in accordance with ARM 46.12.1237.

(i) For any provider providing nursing facility services in a facility constructed prior to June 30, 1982 and for whom a calculated property component has not been determined by the department in accordance with ARM 46.12.1237 for rate year ~~1995~~ 1996, the ~~1995~~ 1996 property component shall equal the June 30, 1985 property rate computed for the facility according to the rules in effect as of June 30, 1985 and indexed forward to the 1992 rate year according to the rules in effect for rate year 1992.

(3) For rate years beginning on or after July 1, ~~1995~~ 1996, the provider's calculated property cost component is as follows:

(a) If the provider's ~~1995~~ 1996 property component is greater than the provider's base year per diem property costs, then the provider's calculated property cost component is the lesser of the provider's ~~1995~~ 1996 property component or the property rate cap of $11.00.

(b) If the provider's base year per diem property costs exceed the provider's ~~1995~~ 1996 property component by more than $1.36, then the provider's calculated property cost component is

the sum of the provider's ~~1995~~ 1996 property component plus $1.36.

(c) If the provider's base year per diem property costs exceed the provider's ~~1995~~ 1996 property component by $1.36 or less, then the provider's calculated property cost component is the provider's base year per diem property costs.

(4) through (5)(a) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

46.12.1245 SEPARATELY BILLABLE ITEMS (1) through (5) remain the same.

(6) All prescribed medication, including flu shots and tine tests, may be billed separately by the pharmacy providing the medication, subject to department rules applicable to outpatient drugs. The nursing facility will bill medicare directly for 100% reimbursement of influenza vaccines and their administration when they are provided to an eligible medicare part B recipient. Medicaid reimbursement is not available for influenza vaccines and related administration costs for residents that are eligible for medicare part B.

(7) through (10) remain the same.

AUTH: Sec. 53-1-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.1254 BED HOLD PAYMENTS (1) through (6)(b) remain the same.

(c) the resident is absent from the provider's facility for no more than 72 consecutive hours per absence, unless the department determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence. If a resident leaves the facility unexpectedly, on a weekend or a non business day for a visit longer than 72 hours, a provider must call in to the department on the next business day to receive prior authorization for the visit. If a resident is unexpectedly delayed while out on a therapeutic home visit, a provider must call the department and receive prior authorization if that delay will result in the visit exceeding 72 hours or obtain an extension for a visit that was previously approved by the department in excess of 72 hours.

(7) through (10) remain the same.

AUTH: Sec. 53-1-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The proposed changes are necessary to make minor adjustments in the methodology for setting reimbursement rates for providers of medicaid nursing facility services and to implement other miscellaneous changes related to medicaid reimbursement and coverage of nursing facility services.

The department proposes to maintain the current reimbursement methodology for state fiscal year 1997. The legislature appropriated funds necessary to fund the methodology for FY 1997, including application of the applicable DRI McGraw-Hill Nursing Home market basket index to account for inflation from FY 1996 to FY 1997. The total amount of state and federal funding available for medicaid nursing facility reimbursement for FY 1997 is $101,522,110.

Based upon the information currently available, it appears that slight adjustments in some of the methodology parameters may be necessary to implement the appropriated funding increase. The proposed changes to ARM 46.12.1229 and 1231 would make these adjustments. The proposed changes to ARM 46.12.1229 would increase the operating cost component limit percentage from 105% to 106% of median operating costs. The proposed change to ARM 46.12.1231 would increase the direct nursing personnel cost component limit percentage from 116% to 117% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score determined in accordance with ARM 46.12.1232. These changes represent the department's best current estimates of the levels that will be finally adopted. At this time the department has not received all data and information necessary to make the final determination regarding the levels of these limits. The department does not yet have all patient assessment scores or all private pay rate information necessary to make final determinations as to the limits. This information will be available before the public hearing and this information and the department's determinations based upon this information will be shared with providers and provider associations as soon as it is available.

The proposed changes to ARM 46.12.1237 are necessary to provide for property rate component increases to those providers whose 1996 property rates were below the provider's base period per diem cost, up to a maximum increase of $1.36 per diem. The property component for other providers will remain at the 1996 level.

Proposed changes to ARM 46.12.1245 would require providers to bill medicare directly for influenza vaccines and administration of the vaccines when provided to eligible medicare part B recipients. Medicare provides 100% reimbursement for this item and services, and the proposed change is necessary to specify that medicaid reimbursement is not available under these circumstances.

Proposed changes to ARM 46.12.1254 would specify requirements that must be met to qualify for bed hold reimbursement for therapeutic home visits under certain circumstances. When a recipient unexpectedly departs the facility on a weekend or other non-business day for a visit that will exceed 72 hours,

the facility would be required to call the department on the next business day to obtain authorization. If a recipient already on a therapeutic home visit is unexpectedly delayed in returning to the facility, extending the visit beyond the 72-hour limit, the facility must call the department to obtain authorization for the extension. Bed hold payments are payments of the per diem rate to the facility for days that the recipient is absent from the facility. The proposed provisions are necessary to assure that medicaid bed hold payments are limited to circumstances where the therapeutic visit and the length of the visit is medically necessary and appropriate.

The proposed changes to ARM 46.12.1223 refer to and implement the requirement in 53-6-168, MCA that under certain circumstances nursing facilities must pay the funds of deceased residents to the department. The proposed change is necessary to include reference to this requirement in the rule that currently contains references to other requirements applicable to nursing facilities holding the funds of residents.

Proposed changes to the definition of nursing facility services in ARM 46.12.1222(14) are necessary to delete unnecessary duplicate references to routine incontinence care and sanitary pads.

The estimated total funding increase for medicaid nursing facility reimbursement for fiscal year 1997 is $4,673,000 in federal and state funds. The medical care advisory council will be notified of the proposed changes on April 18, 1996. Copies of this notice are available from local county human services offices.

4. The proposed changes will apply to nursing facility services provided on or after July 1, 1996.

5. All internal rule references to Medicaid Services Division and the Department of Social and Rehabilitation Services in Title 46, Chapter 12, Sub-chapter 12 will be changed to Senior and Long Term Care Division and Department of Public Health and Human Services, respectively, in the quarterly updates to the Administrative Rules of Montana.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than May 29, 1996.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules I through IX and the repeal of rules 46.12.525, 46.12.526, 46.12.527, 46.12.530, 46.12.531, 46.12.532, 46.12.535, 46.12.536, 46.12.537, 46.12.545, 46.12.546 and 46.12.547 medicaid coverage and reimbursement of physical therapy, speech therapy, occupational therapy and audiology services	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION AND REPEAL OF RULES

TO: All Interested Persons

1. On May 16, 1996, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of rules I through IX and the repeal of rules 46.12.525, 46.12.526, 46.12.527, 46.12.530, 46.12.531, 46.12.532, 46.12.535, 46.12.536, 46.12.537, 46.12.545, 46.12.546 and 46.12.547 medicaid coverage and reimbursement of physical therapy, speech therapy, occupational therapy and audiology services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 2, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be adopted provide as follows:

[RULE I] THERAPY SERVICES, DEFINITIONS In [Rules I through V], the following definitions apply:

(1) "Condition" means an illness, injury, disorder or disability.

(2) "Licensed therapist" means a physical therapist, speech-language pathologist or occupational therapist licensed under the applicable provisions of Title 37, MCA to practice the particular category of therapy services provided, but does not include an assistant, aide or other person whose authority to

perform services is restricted to working under the supervision of another.

(3) "Maintenance therapy" means repetitive therapy services that are required to maintain functions, that are performed without reasonable expectation of significant progress and that do not involve complex and sophisticated therapy services requiring the judgment or skill of a licensed therapist.

(4) "Mid-level practitioner" means an advanced practice registered nurse or a physician assistant as defined in ARM 46.12.2011.

(5) "Occupational therapy services" means occupational therapy services as defined in 37-24-103, MCA. For purposes of [Rules I through V], occupational therapy services do not include services provided by a hospital or home health agency.

(6) "Physical therapy services" means physical therapy services as defined in 37-11-101, MCA. For purposes of [Rules I through V], physical therapy services do not include services provided by a hospital or home health agency.

(7) "Practitioner" means a physical therapist, speech-language pathologist or occupational therapist licensed under the applicable provisions of Title 37, MCA to practice the particular category of therapy services provided. For purposes of [Rules I through V], practitioner includes an assistant, aide or other person authorized under the applicable provisions of Title 37, MCA to perform the particular category of therapy services provided, if the assistant, aide or other person performs the services in accordance with all applicable requirements, including but not limited to qualification and supervision requirements.

(8) "Restorative therapy" means therapy services that are reasonable and medically necessary for treatment of the individual's condition as provided in [Rule III].

(9) "Speech therapy services" means the practice of speech-language pathology as defined in 37-15-102, MCA. For purposes of [Rules I through V], speech therapy services do not include services provided by a hospital or home health agency.

(10) "Therapy services" or "therapies" means speech therapy services, occupational therapy services and physical therapy services.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-101 and 53-6-113, MCA

[RULE II] THERAPY SERVICES, PROVIDER REQUIREMENTS

(1) These requirements are in addition to those contained in rule provisions generally applicable to medicaid providers.

(2) Therapy service providers, as a condition of participation in the Montana medicaid program, must:

(a) maintain a current license issued by the applicable Montana licensing board for the category of therapy being provided, or, if the provider is serving recipients outside the

state of Montana, maintain a current license in the equivalent category under the laws of the state in which the services are provided;

(b) enter into and maintain a current provider enrollment form under the provisions of ARM 46.12.302 with the department's fiscal agent to provide the category of therapy services being provided.

AUTH: 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE III] THERAPY SERVICES, SERVICE REQUIREMENTS AND RESTRICTIONS (1) The requirements and restrictions in this rule apply for purposes of coverage and reimbursement of therapy services under the Montana medicaid program.

(2) Except as otherwise provided by these rules, therapy services must be provided by a practitioner within the scope of practice permitted by state law. The provider's records maintained under ARM 46.12.308 must demonstrate compliance with applicable supervision and protocol requirements.

(3) Therapy services may be provided to a recipient only upon a current written order or prescription by a physician or mid-level practitioner. The physician or mid-level practitioner must separately order or prescribe evaluations and treatment services, although the separate orders or prescriptions may be contained in the same document.

(a) The provider is not entitled to medicaid reimbursement if services are provided prior to actual receipt of the written order or prescription. Prescriptions and orders are valid for medicaid purposes for no more 90 days.

(b) The provider must maintain the prescription or order of the physician or mid-level practitioner and appropriate records that demonstrate compliance with medicaid requirements. The provider must provide copies of these documents at no charge to the department or its agents upon request.

(4) The Montana medicaid program will reimburse restorative therapy services only when the particular restorative therapy services are reasonable and necessary to the treatment of the recipient's condition.

(5) As used in this rule, "reasonable and necessary" means:

(a) The services are considered effective treatment for the recipient's specific disorder under generally accepted standards of practice;

(b) The complexity or sophistication of the services or the recipient's condition is such that the required services can be performed effectively only by or under the supervision of a licensed therapist;

(c) The amount and frequency of services are within generally accepted standards of practice; and

(d) There is a reasonable expectation that the recipient's condition will improve significantly in a reasonable and

predictable period of time based upon an assessment of the recipient's restoration potential made by a physician or mid-level practitioner in consultation, if necessary, with the licensed therapist. The services are not reasonable and necessary if the recipient's expected restoration potential would be insignificant in relation to the extent and duration of services required. If at any point in the treatment of a condition it is determined that the expectations will not materialize, the services are no longer reasonable and necessary.

(e) Services that do not require the performance or supervision of a licensed therapist are not reasonable and necessary even if the services are performed by or under the supervision of a licensed therapist.

(6) Maintenance therapy services are not covered or reimbursable under the Montana medicaid program.

(a) Establishment of a maintenance therapy plan by a licensed therapist is reimbursable. Establishment of a maintenance plan includes the initial evaluation of the recipient's needs, development of a plan that incorporates the treatment objectives of the prescribing physician or mid-level practitioner and that is appropriate for the recipient's capacity and tolerance, instruction of others in carrying out the plan and further evaluations by a licensed therapist as required.

(7) The Montana medicaid program will reimburse speech therapy service providers for medically necessary augmentative speech devices only if the device has been prior authorized by the department and all other requirements have been met. Requests for prior authorization must be made using the form prescribed by the department and must be submitted to the Department of Public Health and Human Services, Health Policy and Services Divisions, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. Forms are available from the department at the above address.

(8) In determining medical necessity for augmentative speech devices, the department will consider the general medical necessity requirements in ARM 46.12.102 and 46.12.306.

(9) The Montana medicaid program will reimburse speech therapy service providers for group speech therapy services only where the group includes no more than 8 patients. Group speech therapy services are billable in increments of one half hour.

(10) Medicaid reimbursement for therapy service procedures includes all related supplies and items used in the performance of the service, except that the design, fabrication, fitting and instruction by a licensed occupational therapy practitioner in the use of dynamic and static splints, braces and slings are reimbursable as provided in ARM 46.12.801 through 46.12.806.

(11) The following limits apply to therapy services:

(a) Occupational therapy services are limited to 70 hours per state fiscal year per recipient without prior authorization and up to an additional 30 hours per state fiscal year per

recipient as prior authorized by the department. No more than 100 hours of occupational therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program.

(b) Speech therapy services are limited to 70 hours per state fiscal year per recipient without prior authorization and up to an additional 30 hours per state fiscal year per recipient as prior authorized by the department. No more than 100 hours of speech therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program.

(c) Physical therapy services are limited to 70 hours per state fiscal year per recipient without prior authorization and up to an additional 30 hours per state fiscal year per recipient as prior authorized by the department. No more than 100 hours of physical therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, and 53-6-113, MCA

[RULE IV] THERAPIES, REIMBURSEMENT (1) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Subject to the requirements of this rule, the Montana medicaid program will pay the lowest of the following:

(a) the provider's usual and customary charge for the service;

(b) the department's fee schedule maintained in accordance with the methodology described in [Rule V]; or

(c) the amount allowable for the same service under medicare, if the therapy services are also covered by medicare for the recipient.

(3) For all purposes under this rule and [Rule V], the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE V] THERAPIES, FEE SCHEDULE (1) The department's fee schedule, referred to in [Rule IV], for therapy services shall include fees set and maintained according to the following methodology.

(2) At least annually the department will review billings for services, other than those services for which a specific fee has been set under the provisions of (3), to determine the total

number of times each such service has been billed by all providers in the aggregate within the previous 12-month period.

(3) Upon review of the aggregate number of billings as provided in (2), the department will establish a fee for each service which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 65.2% of the average charge billed by all providers in the aggregate during such previous 12-month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with [Rule IV(4)].

(4) Once the department has established a fee as provided in (1)(b), the fee will not be adjusted except as provided in (7).

(5) Except as provided in (6), for all services for which no fee has been set under the provisions of (3), the department's fee schedule amount shall be 65.2% of the provider's usual and customary charge. For purposes of (5), the provider's usual and customary charge may not exceed the limit specified in [Rule VIII(4)].

(6) For new procedure codes where a medicare fee is available, the department's fee schedule amount shall be the medicare allowable charge, until the department sets a fee based upon 50 billings for the procedure code as provided in (3).

(7) The department shall adjust the fee schedule to implement increases or decreases in reimbursement by the amount or percentage authorized or directed by the legislature.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-101 and 53-6-113, MCA

[RULE VI] AUDIOLOGY SERVICES, PROVIDER REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to medicaid providers.

(2) Audiology service providers, as a condition of participation in the Montana medicaid program, must:

(a) maintain a current audiology license issued by the Montana board of audiologists, or, if the provider is serving recipients outside the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the services are provided;

(b) enter into and maintain a current provider enrollment form under the provisions of ARM 46.12.302 with the department's fiscal agent to provide audiology services.

AUTH: 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE VII] AUDIOLOGY SERVICES, SERVICE REQUIREMENTS AND RESTRICTIONS (1) The following requirements and restrictions apply for purposes of coverage and reimbursement of audiology services under the Montana medicaid program.

(2) Audiology services are hearing aid evaluations and basic audio assessments provided within the scope of practice permitted by state law to recipients with hearing disorders. Audiology services must be provided by a licensed practitioner within the scope of the practice permitted by state law. The provider's records maintained under ARM 46.12.308 must demonstrate the medical necessity for the service, and compliance with applicable supervision and protocol requirements.

(3) Audiology services may be provided to a recipient only upon a current written order by a physician or mid-level practitioner. The physician or mid-level practitioner must separately order or prescribe evaluations and treatment services, although the separate orders or prescriptions may be contained in the same document.

(a) The provider is not entitled to medicaid reimbursement if services are provided prior to actual receipt of the written order or prescription. Prescriptions and orders are valid for medicaid purposes for no more 90 days.

(b) The provider must maintain the prescription or order of the physician or mid-level practitioner and appropriate records that demonstrate compliance with medicaid requirements. The provider must provide copies of these documents at no charge to the department or its agents upon request.

(4) In addition to the requirements of ARM 46.12.308, a provider must maintain the written orders of the physician or mid-level practitioner and all diagnostic and evaluative reports. The provider must provide copies of these documents at no charge to the department or its agents upon request.

(5) The audiology services must be required as preliminary steps to obtaining a medically necessary hearing aid or device for the recipient.

(6) Basic audio assessments under ear phones must include, at a minimum:

(a) a speech discrimination test;

(b) a speech reception threshold;

(c) a pure tone air threshold; and

(d) either a pure tone bone threshold or one of the following: a tympanogram, acoustic reflex, tympanometry for tubal function or static compliance.

(7) A hearing aid evaluation must be conducted in a sound attenuated room in a free field setting to determine those acoustical specifications most appropriate for the recipient's hearing loss. A hearing aid evaluation must include at least one follow-up visit.

(8) Medicaid reimbursement for a basic audio assessment or a hearing aid evaluation includes all related supplies and items used in the performance of the assessment or evaluation.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE VIII] AUDIOLOGY SERVICES, REIMBURSEMENT (1) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Subject to the requirements of this rule, the Montana medicaid program will pay the lowest of the following for audiology services:

(a) the provider's usual and customary charge for the service;

(b) the department's fee schedule maintained in accordance with the methodology described in [Rule IX]; or

(c) the amount allowable for the same item under medicare, if the services are also covered by medicare for the recipient.

(3) For all purposes under this rule and [Rule IX], the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE IX] AUDIOLOGY SERVICES, FEE SCHEDULE (1) The department's fee schedule, referred to in [Rule VIII], for audiology services shall include fees set and maintained according to the following methodology.

(2) At least annually the department will review billings for services, other than those services for which a specific fee has been set under the provisions of (3), to determine the total number of times each such service has been billed by all providers in the aggregate within the previous 12-month period.

(3) Upon review of the aggregate number of billings as provided in (2), the department will establish a fee for each service which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 65.2% of the average charge billed by all providers in the aggregate during such previous 12-month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with [Rule VIII(4)].

(4) Once the department has established a fee as provided in (1)(b), the fee will not be adjusted except as provided in (7).

(5) Except as provided in (6), for all services for which no fee has been set under the provisions of (3), the department's fee schedule amount shall be 65.2% of the provider's usual and customary charge. For purposes of (5), the

provider's usual and customary charge may not exceed the limit specified in [Rule VIII(4)].

(6) For new procedure codes where a medicare fee is available, the department's fee schedule amount shall be the medicare allowable charge, until the department sets a fee based upon 50 billings for the procedure code as provided in (3).

(7) The department shall adjust the fee schedule to implement increases or decreases in reimbursement by the amount or percentage authorized or directed by the legislature.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-101 and 53-6-113, MCA

3. The rule 46.12.525 as proposed to be repealed is on page 46-1277 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.526 as proposed to be repealed is on page 46-1278 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.527 as proposed to be repealed is on page 46-1279 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.530 as proposed to be repealed is on page 46-1282 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.531 as proposed to be repealed is on page 46-1283 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.532 as proposed to be repealed is on page 46-1285 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.535 as proposed to be repealed is on page 46-1285 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

The rule 46.12.536 as proposed to be repealed is on page 46-1285 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

The rule 46.12.537 as proposed to be repealed is on page 46-1287 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

The rule 46.12.545 as proposed to be repealed is on page 46-1301 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.546 as proposed to be repealed is on page 46-1303 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

The rule 46.12.547 as proposed to be repealed is on page 46-1304 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

4. The proposed changes are necessary to implement changes in federal law, to specify the professionals that may deliver medicaid reimbursable services, to specify the methodology used to set fees and to reorganize and consolidate the rules.

The current rules governing medicaid reimbursement for physical therapy (PT), occupational therapy (OT), speech therapy (ST) and audiology services allow medicaid reimbursement only when the services have been prescribed or ordered by a physician. In 1989, Congress enacted legislation requiring states to cover services provided by nurse practitioners. On April 21, 1995, the Health Care Financing Administration (HCFA) adopted a final rule implementing federal requirements related to this coverage. In the final rule notice, HCFA indicated that state medicaid programs must cover services provided by nurse practitioners. Further, HCFA indicated that, to the extent permitted under state law (i.e., state licensing law) state medicaid programs must permit nurse practitioners to prescribe or refer recipients

to PT, OT, ST and language services. HCFA stated that requiring physician referral as a condition of medicaid payment for the services would create a barrier to allowing nurse practitioners to provide services they are authorized to provide under state law. 60 Fed. Reg. No. 77, April 21, 1995, pp. 19,856 - 19,862. The federal regulations governing PT, OT, ST and language services were amended to permit coverage of PT, OT, ST and language service when prescribed by a physician or other licensed practitioner within the scope of practice.

Nurse practitioners, along with other advanced practice registered nurses and physician assistants, are included in a category of providers referred to in the medicaid program as "mid-level practitioners." See ARM 46.12.2011. The practitioners that are within the definition of mid-level practitioners have authority under Montana law to prescribe or refer patients for PT, OT, ST and language services. The proposed rule would allow medicaid coverage and reimbursement of these services when prescribed or referred by mid-level practitioners, as required by federal law. The proposed rules also specify the documentation requirements that must be met to demonstrate compliance with these rules.

The current rules regarding PT, OT and ST services do not state specifically whether and when the provider may receive medicaid reimbursement when persons other than the actual licensed therapist, such as assistants, aides and interns, actually provide the services. The proposed rules are necessary to specify whether and when services may be provided by these persons. The proposed rules define and use the terms "practitioner" and "licensed therapist" to differentiate between the therapist fully licensed and authorized to practice without another's supervision, and other persons that are restricted under state law to practicing under the supervision of another. The rules use the term "practitioner" when the service may be performed by either category and the term "licensed therapist" when only the fully licensed person may perform the service. Generally, aides, assistants and interns authorized by state law to perform services may do so under the medicaid program as long as the applicable state law requirements, such as supervision requirements, are met. There is a narrow range of services, i.e., establishment of a maintenance therapy plan, that may be reimbursed by medicaid only when actually provided by the licensed therapist. The current rules attempt to specify the scope of service coverage by defining PT, OT, ST and audiology services. This requires interpretation and restatement of state licensing laws outside the scope of the department's authority and expertise. Instead, the proposed rule would take what the department believes is the more appropriate and manageable approach of deferring to state licensing law to define the scope of coverage. The proposed rules also specify the documentation

requirements that must be met to demonstrate compliance with these rules.

The proposed changes revise the methodology for setting fees for therapies and audiology services. The current rules contain procedure code and fee schedules for each separate service category. This approach rigidly defines the codes and fees, and requires more frequent rule changes to update code and fee lists. Typically, changes occur so frequently and quickly that the medicaid rules lag behind procedure codes used by providers for purposes of medicare and private insurance. Fees have not been updated frequently and the existing fee schedules do not explain to providers how the fees were determined. The proposed rules would instead identify the source of procedure codes to be used for billing and the specific methodology by which fees will be set and maintained. The rules are modeled after the rules already in effect for physician services (ARM 46.12.2003) and other service categories in the medicaid program. The proposed rule would allow the use of the most current procedure codes, avoiding unnecessary duplication of requirements for providers. The proposed rule would also provide for periodic updating of fees as directed and funded by the legislature.

The proposed rules reorganize and consolidate the current rules regarding therapies. The current rules are contained in three separate sets of rules, one each for PT, OT and ST. These rules have minor semantic but very few substantive differences. Consolidation and reorganization allows standardization of the requirements among the three service categories and clearer articulation of requirements. The proposed rules also allow for a substantial reduction in rule pages, as encouraged by House Joint Resolution 5, 1995 legislature. Moreover, the review and consolidation process revealed several unnecessary provisions that have been deleted in the redrafted rule sections. Current ARM 46.12.531(10) contains an exhaustive list of factors that are considered in determining medical necessity for augmentative speech devices. This list is unnecessary, as appropriate factors may be considered under the general medical necessity rules at 46.12.102 and 46.12.306. The list has not been included in the proposed rule.

The department estimates that the proposed changes will have no significant financial impact. The medical care advisory council has been informed of the proposed changes. Copies of this rule notice may be obtained from local county human services offices.

4. The proposed rules will be effective July 1, 1996. The rules permitting mid-level practitioners to prescribe or refer for PT, OT, ST and audiology services will apply to services provided on or after May 22, 1995, the effective date of the implemented federal regulations.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than May 23, 1996.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.505 and 46.12.507 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On May 23, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.505 and 46.12.507 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 2, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows:

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (2) remain the same.

(a) For recipients admitted on or after July 1, ~~1993~~ 1996, the department assigns a DRG to each medicaid discharge in accordance with the medicare grouper program version ~~9.0~~ 13.0, as developed by 3M health information systems ~~international, inc~~. The assignment of each DRG is based on:

(2)(a)(i) through (2)(b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~$1,944.50~~ $2,038.43, effective beginning July 1, ~~1995~~ 1996.

(2)(d) through (4)(a)(i) remain the same.

(ii) All out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case is ~~$298.92~~ $222.83. Such rate shall be the final capital-related cost reimbursement for facilities' cost reporting periods with respect to which the department waives retrospective cost settlement in accordance with these rules.

(4)(a)(iii) through (12)(b)(iii) remain the same.

(13) The medicaid statewide average cost to charge ratio equals ~~.66~~ .55.

(14) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (~~1995~~ April 1996 edition). The DRG table of weights and thresholds is published by the department of ~~social and rehabilitation~~ public health and human services. The department hereby adopts and incorporates by reference the DRG table of weights and thresholds (April ~~1995~~ 1996 edition). Copies may be obtained from the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(15) through (17) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.507 OUTPATIENT HOSPITAL SERVICES, SCOPE AND REQUIREMENTS (1) remains the same.

(2) Outpatient hospital services do not include:

(2)(a) remains the same.

(b) exercise programs and programs primarily educational in nature, including but not limited to:

(i) cardiac rehabilitation exercise programs;

(ii) ~~diabetic education and~~ nutritional programs;

(2)(a)(iii) through (3)(e)(ii) remain the same.

(f) diabetic education services provided by a hospital whose diabetic education protocol has been approved by the medicare part A program, P.O. Box 5017, Great Falls, MT 59403. Coverage of diabetic education services is limited to those services meeting the requirements of the Health Care Financing Administration Hospital Manual, HIM 10, Coverage Issues, Appendix Section 80-2. A copy of this section is available through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(4) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

3. The proposed changes to the medicaid inpatient and outpatient hospital reimbursement rules are necessary to implement aggregate legislative funding increases for inpatient hospital reimbursement for state fiscal year 1997, update the DRG grouper program from version 9.0 to version 13.0, update the reference to the department's DRG table of weights and thresholds, add diabetes education as a covered service under

the outpatient hospital program, and make other miscellaneous changes.

The proposed rule implements aggregate funding increases appropriated by the legislature for medicaid hospital reimbursement for state fiscal year 1997. The 1995 legislature appropriated funds under HB 2 for increases in medicaid rates to hospitals. For fiscal year 1997 the department proposes to implement the funding increases by updating the average DRG base price specified in ARM 46.12.505(2)(c) from $1,944.50 to $2,038.43 effective for services provided on or after 7-1-96. This amount is used to calculate payment rates for impatient hospital care provided to medicaid beneficiaries and is usually updated once a year. The most substantial portion of the change is an inflation adjustment for price increases. Other smaller adjustments to the rate include resetting the pools for outliers and catastrophic cases, and small adjustments for liberalization of outlier thresholds and for recalibration of weights as a result of a change in DRG grouper. These changes are needed to make the hospital payments more equitable in terms of the somewhat higher prices hospitals must pay for goods and services. In addition, the change in the base rate is needed to bring it into alignment with the policy of the department in terms of supplemental payments for special types of cases called outliers, catastrophic cases and stop loss cases.

The department also proposes to decrease the statewide average capital cost per case specified in ARM 46.12.505(4)(a)(ii) from $298.92 to $222.83. The Department adds this amount to the payment it makes for each inpatient hospital stay provided to a medical beneficiary by an out-of-state hospital located within 100 miles of the Montana border. The payment recognizes capital costs incurred by the hospitals. The amount is being updated periodically to reflect the most recent available data from Montana hospitals on the actual capital cost per discharge. This change will apply to services provided on or after July 1, 1996.

The proposed change to ARM 46.12.505(2)(a) is necessary to implement a new version of the DRG grouper. The department proposes to upgrade from the medicare grouper version 9.0 to version 13.0. Use of the updated grouper is necessary to reflect the diagnosis and procedure codes currently used by hospitals. Use of an outdated grouper version requires hospitals to use different systems for medicare and medicaid claims, which causes unnecessary administrative burden and expense. The more current grouper version also groups procedures in a manner that more accurately reflects current hospital experience.

The proposed change to ARM 46.12.505(14) is necessary to incorporate by reference an updated version of the department's

table of diagnosis related groups (DRG) weights and thresholds. The DRG table of weights and thresholds will be modified to update the relative weights and day and cost outlier thresholds to account for the recalibration of the DRG system based upon current data and the proposed change from DRG grouper version 9 to version 13.

The department also proposes to change the medicaid statewide costs to charge ratio specified in ARM 46.12.505(13) from the current 0.66 to 0.55. The change is necessary to reflect a substantial change in the relationship between hospital costs and charges. The proposed change is necessary to establish payment levels more closely approximating current cost levels. The cost to charge ratio is used in the payment methodology for certain services to approximate hospital incurred operating (non-capital) costs based upon their charge levels. Since costs are not known when claims are submitted, hospitals are paid a fixed fraction of their usual and customary charges. The fraction is the statewide cost to charge ratio. The ratio is necessarily based upon historical data, which can be submitted by hospitals only after the close of their fiscal year. Additional time lag in obtaining real data occurs while audits, appeals and settlements proceed. When costs or charges, or both, change, the cost to charge ratio may no longer approximate the relationship between costs and charges. The cost to charge ratio has been falling fast during the 1990s for most U.S. hospitals, and for those in Montana. Continued use of the current 0.66 cost to charge ratio would result in overpaying hospitals. The proposed 0.55 cost to charge ratio is an estimate based upon a combination of the most current audited and settled data from medicaid cost reports for Montana hospitals, which is from fiscal year 1993, and from medicare cost to charge ratio trends for the period 1993 to 1995.

The proposed changes to ARM 46.12.507 add diabetes education as a covered service under the medicaid outpatient hospital program. The department believes that coverage of this service is necessary to achieve long term savings to the medicaid program through reduced inpatient hospital stays.

The estimated total funding increase for fiscal year 1997 will be approximately $1,841,000. This figure is based upon budget figures from the 1995 legislature. It is not possible to estimate either a cost increase or decrease as a result of adding diabetes education as covered outpatient service. It is our expectation that long term savings will accrue as a result of better informed patients who will require fewer hospitalizations. The medical care advisory council has been informed of the proposed changes. Copies of this notice are available from local county human service offices.

4. The proposed changes will be applied to medicaid inpatient and outpatient hospital services provided on or after July 1, 1996.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than May 29, 1996.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Michael B. Billings for
Director, Public Health and Human Services

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I through XIII and REPEAL OF ARM 42.25.1001, 42.25.1002, 42.25.1003, 42.25.1004, 42.25.1005, 42.25.1007, 42.25.1008, 42.25.1009, 42.25.1010, 42.25.1011, 42.25.1012, 42.25.1013, 42.25.1014, 42.25.1015, 42.25.1016, 42.25.1017, 42.25.1018, 42.25.1027, 42.25.1028, 42.25.1029, 42.25.1030, 42.25.1201, 42.25.1202, 42.25.1206, 42.25.1207, 42.25.1208, 42.25.1209, 42.25.1210, 42.25.1301, 42.25.1302, 42.25.1303, 42.25.1304, 42.25.1305, 42.25.1306, 42.25.1307, 42.25.1308, 42.25.1309, 42.25.1310, 42.25.1401, and 42.25.1402 relating to Oil and Gas Rules for the Natural Resources Tax Bureau	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION and REPEAL OF OIL AND GAS RULES

TO: All Interested Persons:

1. On May 20, 1996, at 1:30 p.m., a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules I through XIII and repeal of ARM 42.25.1001, 42.25.1002, 42.25.1003, 42.25.1004, 42.25.1005, 42.25.1007, 42.25.1008, 42.25.1009, 42.25.1010, 42.25.1011, 42.25.1012, 42.25.1013, 42.25.1014, 42.25.1015, 42.25.1016, 42.25.1017, 42.25.1018, 42.25.1027, 42.25.1028, 42.25.1029, 42.25.1030, 42.25.1201, 42.25.1202, 42.25.1206, 42.25.1207, 42.25.1208, 42.25.1209, 42.25.1210, 42.25.1301, 42.25.1302, 42.25.1303, 42.25.1304, 42.25.1305, 42.25.1306, 42.25.1307, 42.25.1308, 42.25.1309, 42.25.1310, 42.25.1401, and 42.25.1402 relating to Oil and Gas Rules for the Natural Resources Tax Bureau.

2. The proposed rules replace rules currently found in the Administrative Rules of Montana. The rules which they replace are currently found at pages 42-2551 through 42-2569.2 and 42-2581 through 42-2588.2 which are being repealed with this notice.

3. The new rules as proposed to be adopted provide as follows:

RULE I DEFINITIONS (1) In addition to the definitions found in 15-36-303, MCA, definitions used throughout this chapter are further defined.

(2) "Lease" means that particularly described tract of

land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. A lease may contain one or more wells. One operator shall be named as the lease operator and shall be responsible for filing the net oil and natural gas production tax return.

(3) "MCF" means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch and a temperature of 60 degrees Fahrenheit.

(4) "Natural gas" means a mixture of hydrocarbon gases and other products which at normal atmospheric conditions of temperature and pressure are in a gaseous state.

(5) "Natural gas liquids" means all ethane, butane, propane, hexane, heptane and heavier gases which are removed for natural gas by processing.

(6) "Producing well" means a well that produced natural gas, petroleum or other crude or mineral oil in the year prior to the current calendar year.

(a) A well that is used for injection purposes only is not a producing well.

(b) A well that produces only water is not a producing well.

(c) A well that was capable of producing oil or gas but in fact did not produce oil or gas in the year prior to the current calendar year is not a producing well.

(7) "Unit operation" is one in which persons owning leasehold interest in one or more pools or portions thereof in a field combine their operations to function as one unit operation for pressure maintenance of secondary recovery purposes, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced. One operator must be named as the unit operator and shall be responsible for filing the oil and natural gas production tax return.

AUTH: 15-36-322, MCA; IMP: 15-36-301 through 15-36-326, MCA

Rule II DECLARATORY RULING PROCEDURE (1) When an operator is uncertain how these regulations will apply to a particular circumstance, that person may petition the department for a declaratory ruling as to the applicability of the statute and regulation, or both of them, to that person's activity or proposed activity. Section 2-4-501, MCA, provides the authority, and regulations. ARM 1.3.227 through 1.3.229 provides the procedures to be used in requesting a ruling.

(a) In addition to the contents of the petition outlined in ARM 1.3.227, a petition must delineate the well or wells for which the petition is submitted.

(2) The fact that a person did not petition the department for a declaratory ruling regarding the applicability of a statute and regulation, or both of them, to that person's

activity or proposed activity shall not be construed as a failure to exhaust administrative remedies in any subsequent administrative or judicial review, or litigation, between the department and the person involved over any particular item with respect to the oil and natural gas production tax.

AUTH: 15-36-322, MCA; IMP: 15-1-222, 15-36-301 through 15-36-326, MCA

Rule III TREATMENT OF NONWORKING INTERESTS (ROYALTIES)

(1) Nonworking interest owners share of production paid to the federal, state, tribal, county or municipal governments pursuant to the lease are deductible from gross value in determining oil or natural gas production tax.

(2) Nonworking interest owners' oil and natural gas production is subject to different tax rates than the working interest, as shown in Rule IX.

AUTH: 15-36-322, MCA; IMP: 15-36-304, MCA;

Rule IV HORIZONTALLY COMPLETED OR RECOMPLETED WELLS

(1) For horizontally completed or horizontally recompleted wells the operator must provide to the department of revenue a copy of the horizontal certification from the board of oil and gas conservation. If the operator does not provide the certification, or the well is not certified by the board as horizontally completed, production from the well will be subject to the tax rates in Rule IX(1)(b)(i)(B) until such time as operator provides the certification to the department. If a certification is received by the department after the month in which production for sale first occurs, and the taxpayer has filed and paid taxes on production which is greater than would otherwise be due, a refund or credit will be granted to the taxpayer.

(2) Production from a well certified by the board to be horizontally completed will be subject to the tax rates in Rule IX(1)(b)(iii)(A) for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil well is pumped or flows. Production from certified horizontal wells will be subject to the tax rates under Rule IX(1)(b)(iii)(B) after the first 18 months of production, but less than 25 months. Production from horizontal wells after the first 24 months of production will be taxed under Rule IX(1)(b)(iii)(C) unless it is stripper or has incremental production.

Example: The first production for sale from a horizontally drilled well is February 18, 1996. February 1996 is considered the first month of production subject to the tax rates in Rule IX(1)(b)(iii)(A), and the last month of the exemption will be July 1997. The first month of production subject to the tax rates in Rule IX(1)(b)(iii)(B) in this example

is August 1997, and the last month is January, 1998. The tax rates in Rule IX(1)(b)(iii)(A) will apply to the month in which production for sale first occurs regardless of when the operator provides a copy of the certification notice to the department.

(3) All production from wells certified by the board to be horizontally recompleted and have not produced oil during the five years immediately preceding the month the well was horizontally recompleted will be classified as incremental and the tax rates in Rule IX(1)(b)(iv)(C)(I) and (II) apply.

(4) This section applies to a well reported as a post-1985 well prior to recompletion as a horizontal well. For wells certified by the board to be horizontally recompleted, the tax rates in Rule IX(1)(b)(iv)(C) apply to the incremental production. The operator must provide a production decline rate approved by the board. If a well is in primary recovery after the first 18 months of production the well will be classified as a post-1985 well, and the tax rates in Rule IX(1)(b)(i)(B)(III) will apply, or if qualified as a stripper well the rates in Rule IX(1)(b)(ii)(B)(I) and (II), or both of them apply.

(5) This section applies to a well reported as pre-1985 well prior to recompletion as a horizontal well. For wells certified by the board to be horizontally recompleted only the incremental production from horizontal recompletions will be taxed at the rates in Rule IX(1)(b)(iv)(C) from the completion date noted on the certification notice from the board. The operator must provide a production decline rate approved by the board. If a well is in primary recovery after the first 18 months of production the well will be classified as a pre-1985 well, and the tax rates in Rule IX(1)(b)(i)(A), will apply, or if qualified as a stripper well the rates in Rule IX(1)(b)(ii)(A)(I) and (II), or both of them apply.

AUTH 15-36-322, MCA; IMP 15-36-304, MCA;

Rule V QUALIFICATION OF NEW OR EXPANDED RECOVERY PROJECTS (1) For new or expanded enhanced recovery projects the operator must provide to the department of revenue the board's approval of the project and the designated area of the project. If a project has not been approved by the board, the operator will not be allowed to report and pay taxes herein at the reduced rates for incremental production.

(2) A tax return shall be filed for the wells in each designated area. If the designated area for a new or expanded enhanced recovery project does not include all the wells reported as a lease or unit for tax purposes prior to the inception of the new or expanded enhanced recovery project, the wells not included in the designated area approved by the board will continue to be reported as a lease or unit for tax purposes and none of the production from wells outside the designated area can be reported as incremental.

(3) No production will qualify as incremental prior to January 1, 1994. For new or expanded projects commenced after January 1, 1994, approval should be obtained from the board for the project prior to the due date of any production tax returns. If, however, such approval is not received until after the returns are filed for any quarter the operator may file amended returns after the board has approved the project and established a production decline rate for the project.

AUTH 15-36-322, MCA; IMP 15-36-304, MCA;

Rule VI ALLOCATION OF INCREMENTAL PRODUCTION (1) If the designated area of a new or expanded enhanced recovery project has wells reported for tax purposes prior to the inception of the new or expanded enhanced recovery project, both as pre-1985 wells and as post-1985 wells, the operator must report and pay any tax due at the appropriate applicable rates on the non-incremental and incremental for pre-1985 and post-1985 wells.

(2) The amount of tax to be paid at pre-1985 and post 1985 tax rates will be based upon a production ratio determined each calendar year.

(a) The pre-1985 ratio will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as pre-1985 wells by the total production for the previous calendar year from the designated area of the new or expanded recovery project.

(b) The post-1985 ratio will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as post-1985 wells by the total production for the previous calendar year from the designated area of the new or expanded recovery project.

(3) Incremental production to be reported as pre-1985 wells is the amount of production computed when the pre-1985 ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental pre-1985 production to be reported is determined by subtracting the amount of pre-1985 incremental production from the total pre-1985 production for the project for the tax period being reported.

(4) Incremental production to be reported as post-1985 is the amount of production computed when the post-1985 ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental post-1985 production to be reported is determined by subtracting the amount of post-1985 incremental production from the total post-1985 production.

(5) The value for all production (incremental and non-incremental) in a project will be based upon an average price for the production sold from the project during the quarter.

AUTH 15-36-322, MCA; IMP 15-36-303 and 15-36-304, MCA;

Rule VII AVERAGE DAILY WELL PRODUCTION CALCULATION (1) In

determining whether a lease or unit has an average daily production of 60,000 cubic feet of natural gas or less per well, only those wells that produced natural gas during the prior calendar year shall be used in the calculation. For natural gas that is processed to remove natural gas liquids the volume (i.e., cubic feet) used to calculate the average daily production herein will be the volume prior to any removal of the natural gas liquids.

(2) In determining whether a lease or unit has an average daily production of 10 barrels of crude oil or less per well, only those wells that produced crude oil during the prior calendar year shall be used in the calculation.

(3) The operator must provide a stripper calculation for the previous calendar year to the department to qualify each oil stripper or natural gas stripper lease or unit each year when filing the return for the quarter ending in March to qualify the lease or unit as stripper for the current year.

Example: To file and report a lease or unit as stripper on the 1996 quarterly returns an operator must file with the return for the quarter ending March 31, 1996, the necessary calculation showing the average daily production for the lease or unit for all of 1995.

(4) If a well or group of wells has qualified as an enhanced recovery project or an expanded enhanced recovery project, all production from the well or wells, including any incremental production, must be included as production for the purpose of determining if the well or wells qualify as stripper.

AUTH: 15-36-322, MCA; IMP: 15-36-303 and 15-36-304, MCA;

RULE VIII DUALLY QUALIFIED STRIPPER WELLS AND ENHANCED RECOVERY PROJECTS (1) For the purpose of this rule a lease or unit will be considered to be dually qualified if the lease or unit qualifies as an oil stripper and the wells are within an approved enhanced recovery project. If the wells are dually qualified the tax rates for stripper, incremental and non-incremental may all apply.

(a) If the production for a quarter from a dually qualified lease or unit is less than 270 barrels (3 barrels/day times 90 days in a calendar quarter) for each producing well in the lease or unit the tax rates in Rule IX(1)(b)(ii)(A)(I) or Rule IX(1)(b)(ii)(B)(I) apply.

(b) If the production from each well in a dually qualified lease or unit is greater than 270 barrels for each producing well in the lease or unit the tax rates in Rule IX(1)(b)(ii)(A)(I) or Rule IX(1)(b)(ii)(B)(I) apply to the first 3 barrels, and if:

(i) The total production for the quarter from the dually qualified lease or unit is less than the "production decline

rate" for the calendar quarter any production in excess of 270 barrels times the number of producing wells in the dually qualified lease or unit will be taxed at the rates in Rule IX (1)(b)(ii)(A)(II) or Rule IX(1)(b)(ii)(B)(II), whichever is appropriate. None of the production would be taxed at the incremental tax rates.

Example: A dually qualified lease or unit has 10 producing wells in it and the "production decline rate" for the quarter is 4250 barrels. The actual production for the quarter 3500 barrels. Therefore, 2700 barrels(10 wells times 270 barrels per well) would be taxed at the rates in Rule IX(1)(b)(ii)(A)(I) or Rule IX(1)(b)(ii)(B)(I), and 800 barrels (3500 barrels minus 2700 barrels) would be taxed at the rates in Rule IX(1)(b)(ii)(A)(II) or Rule IX(1)(b)(ii)(B)(II), whichever is appropriate.

(ii) The total production for the quarter from the dually qualified lease or unit is greater than the "production decline rate" for the calendar quarter production in excess of the "production decline rate" will be taxed as incremental and the tax rates in Rule IX(1)(b)(iv)(A)(I) and (II), or both of them, will apply for secondary production, or the tax rates in Rule IX(1)(b)(iv)(B)(I) and (II), or both of them, for tertiary production will apply.

Example: A dually qualified lease or unit has 10 producing wells in it and the "production decline rate" for the quarter is 4250 barrels. The actual production for the quarter 6000 barrels. Therefore, 2700 barrels(10 wells times 270 barrels per well) would be taxed at the rates in Rule IX(1)(b)(ii)(A)(I) or Rule IX(1)(b)(ii)(B)(I), and 1550 barrels (1550 barrels plus 2700 barrels = 4250) would be taxed at the rates in Rule IX(1)(b)(ii)(A)(II) or (B)(II), whichever is appropriate, and 1750 (6000-4250) barrels would be taxed at the appropriate incremental tax rates in Rule IX(1)(b)(iv).

AUTH 15-36-322, MCA; IMP 15-36-303 and 15-36-304, MCA;

RULE IX TAX RATES (1) The table below reflects the tax rates effective on January 1, 1996, and include the rates contained in 15-36-304, MCA, and 82-11-131, MCA. The rate of tax set under 82-22-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the Board of Oil and Gas:

Table I Type of Production	Working Interest	Nonworking Interest
(a) Natural gas		
(i) pre-1985 wells	18.85%	15.1%
(ii) post-1985 wells(qualifying production)		
(A) First 12 months	.8%	15.1%
(B) After first 12 months, but less than first 25 months	12.8%	15.1%
(C) after first 24 months	15.45%	15.1%
(iii) Stripper(wells averaging < 60 MCF/day)		
(A) pre-1985 and post-1985 wells	11.3%	15.1%
(b) Oil		
(i) primary recovery production		
(A) pre-1985 wells	14.2%	17.2%
(B) post-1985 wells		
(I) First 12 months	.8%	15.1%
(II) After first 12 months, but less than first 25 months	7.8%	15.1%
(III) After first 24 months	12.8%	15.1%
(ii) Stripper(wells averaging < 10 bbls/day)		
(A) pre-1985 wells		
(I) First 3 barrels	5.8%	17.2%
(II) Over 3 barrels	10.8%	17.2%
(B) post-1985 wells		
(I) First 3 barrels	5.8%	15.1%
(II) Over 3 barrels	10.8%	15.1%
(iii) Horizontally drilled		
(A) First 18 months	.8%	5.8%
(B) After first 18 months, but less than first 25 months	7.8%	12.8%
(C) After 24 months	12.8%	12.8%
(iv) Incremental Production		
(A) Secondary Production		
(I) pre-1985 wells	8.8%	16.3%
(II) post-1985 wells	8.8%	10.8%
(B) Tertiary Production		

Table I Type of Production		Working Interest	Nonworking Interest
(I)	pre-1985 wells	6.1%	15.3%
(II)	post-1985 wells	6.1%	9.8%
(C)	Horizontally recompleted		
(I)	First 18 months	5.8%	5.8%
(II)	After 18 months	12.8%	12.8%

AUTH 15-36-322, MCA; IMP 15-36-304 and 82-11-131, MCA;

RULE X DISTRIBUTION (1) The department will determine whether tax payments received are for production occurring prior to January 1, 1995, or are for production occurring after December 31, 1994, but before January 1, 1996, or are for production occurring after January 1, 1996.

(a) If the tax payment is for production occurring prior to January 1, 1995, and is local government severance tax, all the proceeds will be distributed to counties and local schools as described in this rule;

(b) If the tax payment is for production occurring after December 31, 1994, but before January 1, 1996, and is local government severance tax, all the proceeds will be distributed to counties and local schools as described in this rule;

(c) If the tax payment is for the oil and natural gas production tax for production occurring after January 1, 1996, it will be allocated between the State and local government and schools as provided in Table I of this rule. The portion allocated to the State will be distributed as provided in Table I. The portion of money allocated to local government and schools from pre-1985 wells will be distributed pursuant to 15-36-324, MCA. The portion of money allocated to local government and schools from post-1985 wells for production occurring after January 1, 1996, will be transmitted to the taxing unit where the production occurred to be distributed pursuant to 15-36-324, MCA.

(d) The department may enter into revenue sharing agreements with Indian Tribes which may change the distribution described in this rule for production within an Indian reservation.

Table I TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distributed to RIGWAT
OIL PRODUCTION					
Working Interest					
Stripper					
Pre-1985 and Post-1985 Wells					
First 3 Barrels	86.20%	13.20%	0.00%	37.50%	62.50%
Post-1985 Wells(Qualifying Production)					
First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, But less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Horizontally Drilled					
Newly Drilled					
First 18 months of production	0.00%	100.0%	0.00%	37.50%	62.50%
After 18 months, but less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Recompleted					
Rirst 18 months	0.00%	100.0%	86.21%	5.17%	8.62%
All Other Oil Production					
Working and Royalty Interests	60.70%	39.30%	86.21%	5.17%	8.62%
GAS PRODUCTION					
Post-1985 Wells(Qualifying Production)					
First 12 months of product.	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, but less than 24 months	93.75%	6.25%	0.00%	37.50%	62.50%
All Other Gas Production					
Working and Royalty Interests	86.00%	14.00%	76.81%	8.70%	14.49%

(2) The department has established a database containing the 1988 unit values for all school districts having oil and gas, or both of them, production for leases or units that were required to file the annual net proceeds returns for calendar year 1988 including adjustments under 15-36-323, MCA, for production occurring on or after January 1, 1995. However, for leases and units that had both oil and gas produced from the same lease or unit in 1988, net proceeds were not separated between oil and gas. Therefore, for the purpose of establishing the unit values, net proceeds were prorated between the oil and gas using the following formula:

$$\frac{\text{Gas Gross Value}}{\text{Total Gross Value}} \times \text{Total Net Proceeds} = \text{Gas Net Proceeds}$$

$$\frac{\text{Oil Gross Value}}{\text{Total Gross Value}} \times \text{Total Net Proceeds} = \text{Oil Net Proceeds}$$

Except, distribution of tax payments made from wells filed under the local government severance tax for production occurring prior to January 1, 1995 the unit values calculated will be based upon the mills levied for the taxing unit in fiscal year 1990 against calendar year 1988 production.

(3) The unit value databases will be adjusted once a year as needed to reflect amended returns for 1988 and audits that affect the 1988 annual net proceeds and taxable royalties. The adjustment will be done on, or about, June 30 each year. Any adjustments that affect the unit values will only be applied on a prospective basis to distribute the county and school taxing units pre-1985 share of the oil and natural gas production tax and payments of the local government severance tax made after January 1, 1996.

(4) A separate unit value has been determined for oil and gas. Therefore, a separate distribution will be done for the oil collections and the gas collections. The amount to be distributed will be:

(a) For production occurring after January 1, 1996, the county and school taxing units pre-1985 share of the oil and natural gas production tax, collected, both for working interest owners and nonworking interest owners, plus the county and school taxing units share of any interest and penalty assessed and collected on the oil and natural gas production delinquencies since the last distribution for each product. In addition, any interest earned from temporarily investing the tax, penalty and interest on the county and school taxing units pre-1985 share of the oil and natural gas production tax will be included in the distribution.

(b) For payments of local government severance tax, for production occurring after December 31, 1994, but before January 1, 1996, the department will distribute to the county and school taxing units based upon the unit values as calculated in 15-36-325, MCA.

(c) For payments of local government severance tax made after May 31, 1996, for production occurring on or before December 31, 1994, the department will distribute to the county and school taxing units based upon the unit values as calculated in (2)(a) above, times the units of production reported for local severance government tax for the calendar quarters ending September 30, 1994 and December 31, 1994. The amount to be distributed will be the total of the county and school taxing units local government severance tax collected for production occurring on or before December 31, 1994. This is for both working interest owners and nonworking interest owners, plus any interest and penalty assessed and collected on the oil and natural gas production delinquencies since the last distribution for each product. In addition, any interest earned from temporarily investing the tax, penalty and interest on the local government severance, for production occurring on or before December 31, 1994, will be included in the distribution.

(5) Once a distribution has been completed and the payments have been made to the taxing units the department will not adjust the distribution for additional payments or refunds retroactively. Any additional tax collected or refunds made will be treated as a current transaction for the distribution as follows:

(a) If a taxpayer makes a payment for a period after the distribution has been completed for that period, the tax collected will be distributed based upon the unit values for the current period.

> Example: A taxpayer makes a payment on May 31, 1997, that was due February 28, 1997. This payment will be included in the total to be distributed on or before August 1, 1997. If the payment had been made timely it would have been included in the May 1, 1997 distribution.

(b) If a taxpayer receives a refund of the oil and natural gas production tax the amount refunded related to pre-1985 production will be taken from the total amount to be distributed in the current period.

> Example: A taxpayer requests and receives a refund on December 31, 1996, for taxes that were paid on May 31,

1996. The counties' share of the original payment of the tax would be included in the distribution made on or before August 1, 1996. The refunded amount will be included as part of the net total distribution made on February 28, 1997.

(c) If a taxpayer elects to take a credit for an overpayment of oil and natural gas production tax, the credit for pre-1985 production will be taken from the total amount to be distributed in the current period.

(6) Any units of production that are exempt from the oil and natural gas production tax will not be used in determining the distribution of the pre-1985 production tax. This includes exempt production for federal, state, county, and non-taxable Indian royalties.

AUTH: 15-36-322, MCA; IMP: 15-36-324, MCA;

RULE XI PARTIAL OR SUPPLEMENTAL PAYMENTS OF TAX (1) If the payment described in Rule X, subsection (1)(c), is for less than the amount owed by the taxpayer for the quarter, as shown on the tax return, the department will prorate the payment for distribution of the tax based upon the ratio of the amount paid to the amount owed. All types of production will be ratably reduced by any underpayment.

Example: Company A's return for the quarter ending March 13, 1996, indicates they owe $1,000 in oil and natural gas production tax. However, they pay $750. All types of production for which tax is owed would be credited at 75% of the payment ($750/$1000).

After the payment is prorated the percentages for the state's share and local government and schools share would be applied as shown in Table II of Rule X.

AUTH: 15-36-322, MCA; IMP: 15-36-324, MCA;

RULE XII BLACKFEET RESERVATION PRODUCTION (1) Operators shall provide copies of tax returns filed with the Blackfeet Tribal Business Council of the Blackfeet Tribe for oil and natural gas production occurring on the Blackfeet Indian Reservation to the department.

(2) This rule will be applicable to production occurring on or after January 1, 1996, and will be applicable as long as a revenue sharing agreement is in effect between the Blackfeet Tribe and the State of Montana.

AUTH 15-36-322, MCA; IMP 15-36-311, 18-11-103, and 18-11-309, MCA;

RULE XIII APPLICABILITY (1) A taxpayer is subject to the

provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, and the corresponding administrative rules as those laws and rules read for all oil and natural gas produced and sold by the operator before January 1, 1996.

(2) Except as provided in (3), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws and administrative rules referred to in (1) governing the tax in effect on the last day of the tax period in which the production took place.

(3) Section 15-36-325, MCA applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(4) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in (1) will be distributed according to the statute and administrative rule governing the allocation of the tax in effect on the date when the tax liability was incurred by the taxpayer.

AUTH: 15-36-322, MCA; IMP: 15-36-324, MCA;

4. The Department proposes to repeal the following rules for oil and gas produced after January 1, 1996:

42.25.1001 DEFINITIONS found at page 42-2551 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Title 15, Ch. 23, part 6, MCA

42.25.1002 NET PROCEEDS TAX RETURN found at page 42-2553 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-602, MCA

42.25.1003 PROCEDURE UPON DISSOLUTION found at page 42-2554 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-609, MCA

42.25.1004 VALUATION found at page 42-2554 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1005 NATURAL GAS EXEMPT FROM SEVERANCE TAX found at page 42-2554 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-121, MCA

42.25.1007 STATUTE OF LIMITATIONS found at page 42-2555 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-8-601 AND 15-23-116, MCA

42.25.1008 WINDFALL PROFIT TAX found at page 42-2555 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, 15-23-605, 15-23-615, and 15-23-616, MCA

42.25.1009 GROSS SALES PROCEEDS found at page 42-2557 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-602 AND 15-23-603, MCA

42.25.1010 POLICY ON NET PROCEEDS DEDUCTIONS found at page 42-2562 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Secs. 15-23-602 and 15-23-603, MCA

42.25.1011 TREATMENT OF ROYALTIES found at page 42-2562 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603 AND 15-23-605, MCA

42.25.1012 EXPENSES RELATED TO MACHINERY found at page 42-2562 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1013 LABOR COSTS found at page 42-2563 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1014 COSTS OF IMPROVEMENTS, REPAIRS, AND BETTERMENTS found at page 42-2564 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1015 DEDUCTIONS FOR DRILLING COSTS AND CAPITAL EXPENDITURES found at page 42-2564 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-8-604, MCA

42.25.1016 TREATMENT OF DEPLETION found at page 42-2555 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1017 OTHER OPERATIONAL COSTS found at page 42-2567 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-603, MCA

42.25.1018 NECESSITY OF PROOF found at page 42-2567 of the Administrative Rules of Montana.

AUTH: Sec. 15-23-108, MCA; IMP: Secs. 15-23-602 and 15-23-603, MCA

42.25.1027 DECLARATORY RULING PROCEDURE found at page 42-2568 of the Administrative Rules of Montana.
AUTH: Sec. 15-23-108, MCA; IMP: Sec. 15-23-602 AND 15-23-603, MCA

42.25.1028 HORIZONTALLY COMPLETED OR RECOMPLETED WELLS found at page 42-2568 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-36-101, MCA

42.25.1029 QUALIFICATION OF NEW OR EXPANDED RECOVERY PROJECTS found at page 42-2569.1 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-36-101, MCA

42.25.1030 ALLOCATION OF INCREMENTAL PRODUCTION found at page 42-2564 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 15-23-614, MCA; IMP: Sec. 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, and 15-36-101, MCA

42.25.1201 DEFINITIONS found at page 42-2581 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-121, MCA

42.25.1202 TREATMENT OF GOVERNMENT ROYALTIES found at page 42-2581 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1206 AVERAGE DAILY WELL PRODUCTION CALCULATION found at page 42-2582 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-121, MCA

42.25.1207 STRIPPER EXEMPTION IN EXCESS OF ACTUAL PRODUCTION found at page 42-2582 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1208 HORIZONTALLY COMPLETED OR RECOMPLETED WELLS found at page 42-2582 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, and 15-36-101, MCA

42.25.1209 QUALIFICATION OF NEW OR EXPANDED RECOVERY PROJECTS found at page 42-2583 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-23-612 AND 15-36-

101, MCA

42.25.1210 ALLOCATION OF INCREMENTAL PRODUCTION found at page 42-2584 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 15-23-614, MCA; IMP: Sec. 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, and 15-36-101, MCA

42.25.1301 TERTIARY PROJECT - APPROVAL found at page 42-2585 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Secs. 15-36-101, MCA

42.25.1302 QUALIFICATION HEARING found at page 42-2585 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1303 DEPARTMENT PROCEDURES FOLLOWING THE HEARING found at page 42-2585 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-36-101, MCA

42.25.1304 APPROVAL REQUIRED FOR CHANGES IN TERTIARY PROJECT found at page 42-2586 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1305 ELIGIBILITY OF PRIOR TERTIARY PROJECTS found at page 42-2586 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 15-23-614, MCA; IMP: Sec. 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, and 15-36-101, MCA

42.25.1306 TERTIARY PROJECT - BYPASS SECONDARY RECOVERY found at page 42-2586 in the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-121, MCA

42.25.1307 OIL PRODUCTION - TAX COMPUTATION found at page 42-2586 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1308 DEFINITIONS found at page 42-2587 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1309 TERTIARY PROJECT - INCREMENTAL PRODUCTION DETERMINATION found at page 42-2587 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-33-101, MCA

42.25.1310 ABSENCE OF ADEQUATE DATA IS BASIS FOR DISAPPROVAL

found at page 42-2588 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-101, MCA

42.25.1401 SEMI-ANNUAL DISTRIBUTION TO THE COUNTIES-LOCAL GOVERNMENT SEVERANCE TAX found at page 42-2588.1 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-112, MCA

42.25.1402 REVISED NET PROCEEDS found at page 42-2588.2 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-36-112, MCA

5. The Department is proposing the adoption of the new rules and the repeal of existing rules because the 1995 Legislature enacted new laws for the oil and gas industry. These changes to the laws are found in Senate Bills 412, 424, and 338, and House Bills 90 and 418, Laws of 1995.

Senate Bill 412 was enacted to consolidate and simplify oil and natural gas production taxes. This bill eliminated the oil and gas net proceeds tax, local government severance tax, and the oil and gas severance. Also, it eliminated the filing of a separate oil and gas resource indemnity trust and ground water assessment tax return, and oil and gas privilege and license tax return. As a result many rules are being repealed and new rules are being adopted and placed in a new subchapter of Title 42 of the Administrative Rules of Montana to make them easier to find and use.

Senate Bill 338 and House Bill 90 provide tax incentives for oil and natural gas production. Senate Bill 338 provides incentives for newly drilled wells and bringing inactive wells back on production. House Bill 90 provides an incentive for oil stripper. Rules are being implemented to clarify how taxpayers can qualify for these incentives.

Senate Bill 424 changed how oil and natural gas production tax collections will be distributed to local governments using the unit value. All of the other bills contained specific instructions to the department about how to distribute tax collections between state and local government. Table II of Rule X implements the legislative instructions for distribution.

House Bill 418 authorized an increase of .1% in the privilege and license tax collected to support the Board of Oil and Gas, but is administered by the Department of Revenue. The tax rate table found in Rule IX (Table I), is being adopted for this increase and to give taxpayers a table that makes it easier to determine the tax rate.

All rules that are unnecessary to implement and administer the new law are being repealed.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than May 24, 1996.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 44.10.411, Incidental Political Committee, Filing Schedule, Reports	))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 27, 1996, the Commissioner of Political Practices proposes to repeal ARM 44.10.411, Incidental Political Committee, Filing Schedule, Reports.

2. The rule proposed to be repealed, ARM 44.10.411, is on pages 44-336 and 44-337 of the Administrative Rules of Montana.
AUTH: 13-37-114, MCA
IMP: 13-37-226(5), MCA

3. The repeal of 44.10.411 is necessary because the procedure outlined in ARM 44.10.411, is redundant and repetitive. Currently, an adequate process is in place which provides reporting by recipients of incidental political committee contributions.

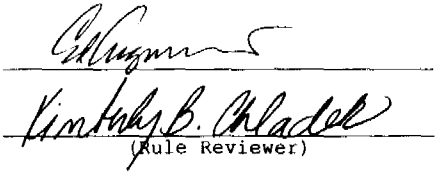
4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Commissioner of Political Practices, 1205 Eighth Ave, PO Box 202401, Helena, MT, 59620-2401. Any comments must be received no later than May 24, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Commissioner of Political Practices, 1205 Eighth Ave, PO Box 202401, Helena, MT 59620-2401. A written request for a hearing must be received no later than May 24, 1996.

6. If the Commissioner receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be 24 persons based on 240 registered incidental political committees in the 1992 election cycle.

COMMISSIONER OF POLITICAL PRACTICES
Ed Argenbright Ed.D



(Rule Reviewer)

Certified to the Secretary of State April 9, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment and transfer of Rule ARM 44.12.109, Personal Financial Disclosure by Elected Officials	)))))	NOTICE OF PROPOSED AMENDMENT AND TRANSFER NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 16, 1996, the Commissioner of Political Practices proposes to amend and transfer rule 44.12.109, which will clarify the statutory changes to the business disclosure provision now set forth at 2-2-106, MCA.

2. The rule as proposed to be amended and transferred provides as follows:

44.12.109 ~~PERSONAL FINANCIAL~~ BUSINESS DISCLOSURE ~~BY ELECTED OFFICIALS~~ (1) For purposes of this rule, "individual" means elected officials, candidates for statewide or state district offices (excluding judiciary); department directors, or anyone appointed to fill any of these offices.

(~~1~~2) For purposes of~~, SS 5-7-012(12) and 5-7-213~~ 2-2-106, MCA, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an ~~elected official~~ individual, ~~his spouse or minor children,~~ the current fair market value of which is $1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(~~2~~3) Not included within the meaning of "business interest" and therefore not reportable under ~~5-7-213~~ 2-2-106, MCA, are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal ~~automobiles~~ vehicles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(d) securities issued by any government or political subdivision.

~~(3)~~(4) ~~In 5-7-102(12), MCA, "property held in anticipation of profit" includes an ownership interest in real property.~~ An ownership interest in real property includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or

royalty interest, if the current fair market value of the interest is $1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each ~~elected official~~ individual is entitled to exclude only one residence.

(b) While valuation of property is not required (it need only be disclosed if its current fair market value exceeds $1000), a description of both the property and the nature of the interest must be included. This may be a ~~legal or other~~ general description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc. ~~Any real property held by or through a corporation or other business entity which was disclosed pursuant to paragraph (1) above need not be disclosed pursuant to this part.~~

(5) Any individual described in (1) of this rule, is required to file a business disclosure form according to the filing schedules prescribed in 2-2-106, MCA. Business disclosure forms are provided by the Commissioner of Political Practices, PO Box 202401, Helena, MT, 59620-2401.

AUTH: 13-37-114, MCA IMP: 2-2-106, MCA

3. Rule 44.12.109 is being amended and transferred because the reporting requirements pertaining to business disclosure were altered during the 1995 legislature. The rule is being amended to incorporate the changes. The rule is intended to be transferred to Title 44, Chapter 10, Subchapter 6.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment and transfer in writing to the Commissioner of Political Practices, PO Box 202401, Helena, MT 59620-2401. Any comments must be received no later than May 23, 1996.

5. If a person who is directly affected by the proposed amendment and transfer wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Commissioner of Political Practices, PO Box 202401, Helena, MT 59620-2401. A written request for hearing must be received no later than May 23, 1996.

6. If the commissioner receives requests for a public hearing on the proposed amendment and transfer from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision

or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on approximately 300 candidates, elected officials, department directors and those appointed to these offices.

COMMISSIONER OF POLITICAL PRACTICES
Ed Argenbright, Ed.D.

Agency Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF
INSURANCE OF THE STATE OF MONTANA

In the matter of the amendment of Rule 6.6.1104 pertaining to the limitation of presumption of reasonableness of credit life and disability rates.	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On January 11, 1996, the Department published a notice at page 7 of the Montana Administrative Register, Issue No. 1, of the proposed amendment of Rule 6.6.1104 pertaining to the limitation of presumption of reasonableness of credit life and disability rates. On March 21, 1996, the Department published the notice of amendment at page 746 of the Montana Administrative Register, Issue No. 6.

2. Because of a typographical error in the notice of proposed amendment, the word "insurer" was inadvertently typed instead of "insured" in 6.6.1104(1)(a). The corrected rule amendments read as follows:

6.6.1104 LIMITATION OF PRESUMPTION OF REASONABLENESS (1) The rates provided in ARM 6.6.1103 are presumed to produce reasonable benefits in relation to premiums only if:

(a) ~~(1)~~ The coverage contains no exclusions for pre existing conditions except for those conditions which manifested themselves to the ~~insurer~~insured debtor by requiring medical diagnosis or treatment~~, or would have caused a reasonably prudent person to have sought medical diagnosis or treatment~~ within 6 months prior to the application for insurance and which caused loss within the 6 months following the effective date of coverage. However, a disability commencing after the expiration of the first 6 months following the effective date of coverage and resulting from such conditions shall be covered.

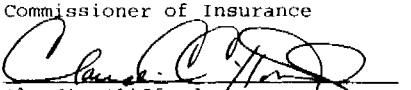
(1)(a) remains the same but is renumbered (1)(a)(i).

(2) - (4) remain the same but are renumbered (b) - (c).

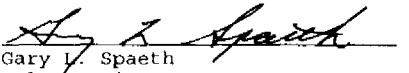
AUTH: 33-21-111, MCA
IMP: 33-21 205, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on March 31, 1996.

Mark O'Keefe
State Auditor and
Commissioner of Insurance



Claudia Clifford
Assistant State Auditor



Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 11th day of April, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 6.10.102, 6.10.120 and 6.10.121 and the repeal of Rules 6.10.104A, 6.10.124, 6.10.128 and 6.10.129 pertaining to securities regulation.	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons.

1. On December 21, 1995, the state auditor and commissioner of securities of the state of Montana published notice of public hearing on the proposed amendment of rules 6.10.102, 6.10.120 and 6.10.121 and repeal of rules 6.10.104A, 6.10.124, 6.10.128 and 6.10.129 pertaining to securities regulation. The notice was published at page 2724 of the 1995 Montana Administrative Register, issue number 24.

2. The agency has amended rules 6.10.102, 6.10.120 and 6.10.121 exactly as proposed.

3. The agency has repealed rules 6.10.104A, 6.10.124, 6.10.128 and 6.10.129, found on pages 6-2017, 6-2027 through 6-2031 and 6-2037 of the Administrative Rules of Montana.

AUTH: 30-10-105 and 30-10-107, MCA
IMP: 30-10-206 and 30-10-105, MCA

4. A public hearing on the proposed amendments and repeal was held on January 22, 1996. No comments or testimony were received at the hearing. Two written comments were received and thoroughly reviewed by the agency. The following is a summary of the comments received along with the agency's response to the comments:

COMMENT: A comment was submitted by Brad Sutherland, compliance officer for D.A. Davidson & Co., concerning the earnings test currently set forth in 6.10.104A. Mr. Sutherland stated that the five year test provided no adjustment if the entity had been in business for less than five years and that the five year or less test and the alternative two year test appear to conflict. Furthermore, Mr. Sutherland suggests that the definition of "promotional or developmental stage" conflicts with the definition of "significant earnings" because of its five year limitation.

RESPONSE: ARM 6.10.102(7) defines a promotional security as one issued to a promoter while a corporation is in a promotional or developmental stage. ARM 6.10.104 permits the

Securities Commissioner (Commissioner) to require that promotional securities be placed in escrow for up to two years from the effective date of the registration of those securities. The issuer cannot then sell or otherwise dispose of the security within that time frame without the permission of the Commissioner. These rules are intended to protect investors. Many promoters of an issue made by a fledgling company may be compensated with shares in the firm or may purchase shares at a price less than that paid by other investors. Promoters may benefit to the detriment of investors if promoters are permitted to sell their shares, acquired at a lower price than that paid by investors, during the time period in which the issuance is being promoted to investors.

The definition of promotional or developmental stage is designed to include only firms whose earnings have not reached a certain level, regardless of the length of time the firm has been in operation, up to the five year period. The underlying assumption is that once the firm has achieved earnings of a certain level, the risks associated with investing in a start-up company are no longer present. Within the five year time frame, it is the amount of earnings rather than the length of time the firm has been in business that is significant.

The two year test is simply an alternative to the five year/30% test. There is no basis for the conclusion that the 30% figure is an upward limit, in other words, that a firm cannot meet the test if its net earnings per share exceed 30% of its price per share. The definition of "promotional or developmental stage" can be read in conjunction with the definition of "significant earnings" leading to the conclusion that significant earnings exist if in any two consecutive years within the previous five years the corporation has earnings per share of 5% or more of the public price per share.

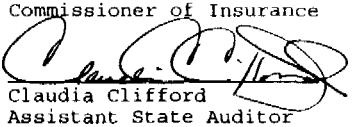
Therefore, the agency respectfully declines to change the proposed rule amendment.

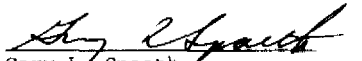
COMMENT: A comment was submitted by Bruce MacKenzie of Dorsey & Whitney suggesting that a typographical error appeared in the original notice. Mr. MacKenzie expressed concern that issuer-appointed salespersons, in particular officers of an issuer, would be required to meet the examination requirements before their registration would be approved.

RESPONSE: The last sentence of ARM 6.10.121 provides that salespersons applying to register with an issuer do not have to take any examination prior to registration. The only individuals to whom subsection (10) of ARM 6.10.120 would apply are salespersons registered with broker-dealers. As noted in the comment, ARM 6.10.121(8) permits the Securities Commissioner to waive any examination requirements for registration as a salesperson. ARM 6.10.120(10) is redundant.

Therefore, the agency will delete that subsection, as originally proposed in the notice of hearing.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 
Claudia Clifford
Assistant State Auditor


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 11th day of April, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 6.10.122 pertaining to securities regulation.	)))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On January 11, 1996, the state auditor and commissioner of securities of the state of Montana published notice of public hearing on the proposed amendment of rule 6.10.122 pertaining to securities regulation. The notice was published at page 15 of the 1996 Montana Administrative Register, issue number 1.

2. The agency has amended rule 6.10.122 with the following changes (new text is underlined; text to be deleted is interlined):

6.10.122 BROKER-DEALER BOOKS AND RECORDS (1) through (1)(c) are amended exactly as proposed.

~~(d) all registration application forms (Form U-4), termination forms (Form U-5), and amendments to Disclosure Reporting Pages (DRP) for each agent, which forms and amendments shall be manually executed, including complete documentation as to any "yes" answer pertaining to disciplinary history or a disclosure issue on Form U-4 or on a DRP; all licenses or other documentation showing registration with state securities jurisdictions, securities exchanges, or self regulatory organizations; all contracts and other records pertaining to the relationship between the agent and the broker dealer; a summary of the agent's compensation agreement with the broker dealer, including commission schedule and details of any commission overrides; copies of all inquiries and customer complaints. Litigation and arbitration files need not be included as long as the files are referenced and readily available.~~

~~(e) all registration application forms (Form BD), withdrawal forms (Form BDW), and amendments to DRP, which forms and amendments shall be manually executed, including complete documentation where required on Form BD; all partnership agreements, corporation records, or other appropriate business records showing the firm's status as a legal entity; all licenses or other documentation showing registration with state securities jurisdictions, securities exchanges, or self regulatory organizations.~~

(2) through (5) remain the same.

3. A public hearing on the proposed amendment was held on January 31, 1996. No comments or testimony were received at the hearing. Written comments were received and thoroughly reviewed by the agency. The following is a summary of the comments received along with the agency's response to the comments:

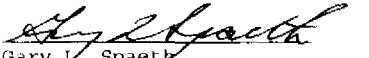
COMMENT: A comment was submitted by the Securities Industry Association (SIA) requesting that the agency postpone consideration of any amendments to Montana's books and records rule. Currently, the North American Securities Administrator's Association (NASAA) is working with the Securities and Exchange Commission (SEC) to amend the SEC's model books and records rule to reflect recent changes to NASAA's model books and records rule. The SIA urged the agency to postpone consideration of any changes until such time as an agreement can be reached regarding changes to the federal rules.

RESPONSE: The proposed rule amendments to ARM 6.10.122(1)(a), 6.10.122(1)(b), and 6.10.122(1)(c), are not substantive in nature. The purpose of the amendments is to clarify current requirements.

NASAA and the SEC hope to come to some agreement regarding the changes necessary to federal rules to address the concerns of state regulators. The goal is to develop standard books and records requirements at the state and federal level. Regarding the proposed changes to ARM 6.10.122(1)(d) and 6.10.122(1)(e), the agency is willing to postpone implementing these changes pending a review of the SEC's amendments to its model books and records rule. Therefore, proposed (d) and (e) are deleted from the proposed amendments. No response will be made at this time to each comment. The absence of such response is not a reflection of the merits of the comments.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 
Claudia Clifford
Assistant State Auditor


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 11th day of April, 1996.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to radiologic technologists	)))	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO RADIOLOGIC TECHNOLOGISTS

TO: All Interested Persons:

1. On March 7, 1996, the Board of Radiologic Technologists published a notice of proposed amendment and repeal of rules pertaining to radiologic technologists at page 618, 1996 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.56.402, 8.56.408, 8.56.409, 8.56.602 through 8.56.602C, 8.56.604, 8.56.801 and repealed ARM 8.56.404, 8.56.407, 8.56.410, 8.56.411 and 8.56.605 exactly as proposed.

3. No comments or testimony were received.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, RT, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 15, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 12.4.202 through 12.4.209 all relating to hunter access and landowner incentives under the block management program.	))))))	NOTICE OF ADOPTION

To: All Interested Persons.

1. On February 22, 1996, notice of the proposed amendments was published in the Montana Register, Issue 4, pages 483 through 487.

2. The Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) have amended the rules as proposed.

3. Public comment was accepted on the proposed amendments through March 21, 1996 with three public hearings held to elicit comment. Those meetings were held in Miles City (March 14) Great Falls (March 19) and Missoula (March 20.) Notice of the comment period as well as the public hearings was made through 26 weekly and all daily newspapers across the state as well as the mailing of over 1200 copies of the proposed rule amendments with a letter soliciting participation in the process. A total of 22 written comments were received and oral testimony was presented by 15 individuals at the public meetings. The comment period closed on March 21.

The comments, with only 3 exceptions, supported the amendments and the incentives program under the block management program. Those voicing opposition generally opposed the concept of any forms of incentives or payments to private landowners who allow public hunting. Five written and four oral comments were supportive of the amendments in general but offered suggestions on changing the structure of the impact payment system. Oral comments were presented by three of the five groups that also sent written comments. These comments recommended reductions in the base impact payment and in turn, increases in the length of season and species/gender impact payments. The reasoning was that such a change would offer a greater incentive to landowners to offer broader and less restrictive opportunities on their land. Also, a number of the comments expressed concern for issues outside of the scope of the amendments under consideration.

After consideration of the comments received, the commission and department decided to adopt the block management rules as proposed. The following is a summary of comments received and the department's and commission's response to those comments:

Comment: Two individuals offered comments which objected to any program which offers private landowners any monetary compensation for allowing public hunting on their property.

Response: This comment is not within the scope of the issues under consideration. The 1995 Legislature, through passage of House Bill 195, established enhancements to the block management program which provided monetary incentives to private landowners who allow free, public hunting on their lands.

Comment: Block management already pays up to $2500 per landowner. With the other incentives being proposed (licenses, $8000 limit, etc.) what's next?(i.e.- isn't that already enough?)

Response: HB 195 established the hunting enhancement program under statute to respond to concerns raised by landowners, sportspeople and outfitters who felt that needs for further incentives were necessary. The decision to expand or modify the program is legislative.

Comment: An individual suggested the inclusion of spring turkey, spring bear and early and late seasons or hunts.

Response: Nothing in the proposed rules precludes a landowner from negotiating with the department for other season contracts or for a landowner to receive compensation under this system for access granted during commission-adopted hunting seasons in the spring.

Comment: An individual recommended a review of the program in a year to evaluate success and to ensure against abuse.

Response: The Private Lands/Public Wildlife Council whose responsibility, among other things, will be to oversee and evaluate the enhanced block management program. This group began functioning in March of 1996 and will be tracking the progress of new initiatives.

Comment: One individual stated support of higher resident license fees if the money went to block management or acquisitions.

Response: HB 195 (87-1-269(2), MCA,) provides that the review committee established through statute must consider increases in resident licenses as a funding mechanism for the program should funding expansion be deemed necessary, and make such recommendations to the governor and the legislature. Acquisitions were not and are not a component of the block management program.

Comment: One commentor stated that he would like to see a percentage of non-resident license fees go to predator control.

Response: This comment is outside of the scope of the proposed amendments; however the department and the commission do acknowledge the suggestion.

Comment: Language on eligibility should be clarified in regards to landowners who outfit or fee hunt on a portion of

their property. Five comments expressed concern over whether rules adequately address outfitting, leasing and other forms of commercial hunting activities. Two comments proposed categorical exclusion of all outfitting in this program.

Response: 87-1-265(3) specifically excludes assistance to landowners who charge fees for hunting access to private land that is enrolled in the program. Furthermore, 87-1-267(2) excludes participation if outfitting or commercial hunting restricts public hunting opportunity.

Comment: One commentor recommended stiffer penalties for not following guidelines set forth in enrollment considerations; also believes there should be a greater enforcement presence on BMA's.

Response: There are no penalties proposed for not following guidelines set forth in the enrollment considerations. Guidelines are proposed to assist department personnel in selecting candidates for inclusion in the program.

Comment: Incentive rates for big game hunting should be different from upland bird hunting; recommends higher rates for big game.

Response: House Bill 195 specifically identified hunter impact as the standard upon which any compensation is to be based. Game species was not a consideration.

Comment: One respondent recommended clarification on monetary value assignment to hunter management.

Response: Landowners who choose to have the department manage hunters on their property will have the cost of that management as incurred by the department deducted from their incentives payment total. That amount can be determined through departmental budget recording for department services rendered.

Comment: To insure quality hunting, one respondent recommended limiting the number of hunter days (or hunter numbers) on a block management area (BMA).

Response: This is currently within the scope of existing rules and negotiation between the department and landowner-cooperators.

Comment: A commentor proposed that landowners should be given similar privileges awarded outfitters such as license set-asides.

Response: Incentives other than the complimentary, non-transferrable resident AAA sportsman's licenses or, for non-resident cooperators, one non-transferrable B-10 combination license (§87-1-266 (2), (3), MCA,) are not within the scope of the proposed amendments to the rules or the statute that established the incentives program.

Comment: One respondent asserted that block management does not provide what it professes to. He recommends that the program be suspended until adequate administration is possible.

There is no process for redress of grievances under the current program.

Response: Although not within the scope of the rules under consideration, a formal grievance procedure to address problems is in place under existing rules (ARM 12.4.210 Complaint Resolution System.)

Comment: 5 written comments were received recommending a smaller base impact payment while increasing the amounts for length of season and species and gender impact payments.

Response: The Incentives Committee, comprised of landowners and sportspeople, met over the course of six months to develop a fair and equitable system to begin the hunting enhancement portion of block management. A number of systems were developed and discussed with the proposed system finally being decided upon as the most equitable way to begin the program. Criteria established by the committee for participation encourages participation by landowners who place no restrictions on length of season or the species or gender of animals available for hunting. Once the proposed system has developed a record of performance, adjustments may be amended into the rules to modify the system if deemed appropriate by the Private Lands/Public Wildlife Council which has oversight over the program.

Comment: One commentor stated that the department is not communicating with field personnel, that field personnel are unable to answer questions or provide information on department programs.

Response: This comment is outside of the scope of amendments being considered. However, the department and the commission acknowledge the comment.

Comment: Suggest co-sponsoring of hunters by adjacent cooperating landowners.

Response: This comment is outside of the scope of the amendments being considered.

Comment: Suggest that "corridor" payments be partially directed to public lands agency under whose authority land being accessed is managed. In this way, they could recover costs associated with monitoring, managing and protecting their land.

Response: Corridor payments are proposed to provide incentives to private landowners who control access to public properties. Costs associated with public use of public lands are the responsibility of the land management agency.

Comment: A suggestion was made to limit the number of times one individual can be counted during the course of a hunter day on different BMAs.

Response: Amendment to ARM 12.4.205(k) restricts the number of times per day a hunter may reserve a slot on a BMA.

Comment: One respondent asked who decides how many hunters can hunt on a given ranch per day? It is disappointing that

large ranches in the Block Management Program only let a few hunters in daily.

Response: ARM 12.4.205(a) establishes how hunter numbers are set on BMAs through cooperation between the department and the cooperating landowner. This rule is not under consideration for amendment.

Comment: Enrollment for the entirety of hunting seasons should be a priority.

Response: Recommendations by the HB 195 Incentives committee identified lands being opened to the full range of legal hunting opportunities for the full season as being an important consideration and the department and commission concur. ARM 12.4.204(c) lists as a criteria for participation that establishment of a block management area will result in sustained or increased hunter opportunity,. access and hunter days on private lands. Proposed amendment 12.4.206(c) provides for additional incentives to those landowners who place no restrictions on commission-established fall hunting seasons for any species legally available in huntable numbers on their property.

Comment: These new incentives will encourage people to buy up our state and federal lands to be eligible for incentives. This program will serve to encourage pay hunting.

Response: State and federal lands, in general, are not available for sale. The enhancement of the Block Management program was instituted by the 1995 Legislature as a step towards resolving long-standing access and hunter use issues in Montana.

Comment: I would like it if block management money were used to open up public land to access in areas where access has been blocked by private landowners and outfitter leases.

Response: Proposed amendment 12.4.206(e) provides incentives for landowners who allow access to previously inaccessible state or federal lands.

Comment: A priority for leasing should be in areas of the state with unrestricted elk hunting.

Response: Amendments under consideration are not for leasing, but rather, providing impact incentives to landowners to provide as wide a range of hunting opportunities as possible. The department could focus efforts in areas where certain kinds of hunting opportunities have been restricted or nonexistent in the past.

Comment: Priority should be given to leasing land within 50 miles of the most populated areas of the state.

Response: Amendments under consideration are not for leasing, but rather, providing impact incentives to landowners to provide as wide a range of hunting opportunities as possible. Enrollment of landowners in the program is a statewide effort. Regional personnel have the discretion to identify special needs such as opportunities close to urban areas to accommodate

greater hunter pressure.

Comment: The quality of hunting opportunities provided must be measured on the basis of pressure and harvest upon a wildlife population during an entire hunting season.

Response: Regional personnel will evaluate potential participants in the program to ascertain if the opportunities provided merit enrollment.

Comment: One person suggested changing ARM 12.4.205(c) to read: "On BMA's which restrict hunter numbers, a cooperator may allow no more than an additional 10% of the daily quota of hunters at his or her discretion."

Response: This comment is outside the scope of amendments being considered in this process. However, a process does exist through which individuals may petition for a revision in ARM rules.

Comment: Suggest changing ARM 12.4.205(e) to read: "Any restrictions on the gender or species available on a BMA, other than those established by the commission must be approved by the regional supervisor in writing, documenting any biological or management reason including scientific data or other evidence on which the decision was based for each restricted species."

Response: This comment is outside the scope of amendments being considered in this process. However, a process does exist through which individuals may petition for a revision in ARM rules.

Comment: There will be just so much money available and the rules and regulations are broken by people that are enrolled in these BMA's. It is just better to go on to somebody (look at other potential cooperators) that is the next priority.I think we are going to accomplish more that way.

Response: Regional personnel have been and are responsible for compliance with all facets of BMA rules by landowners and hunters. Problems or violations of these rules need to be reported to the department for review and action.

Comment: As a landowner who allows public hunting, if I am accepted into the program, I am concerned about having my name published on a list. If you can eliminate the hassle of hunting and the complications that go along with it, you would have a lot more land open.

Response: A fundamental aim of block management is to reduce the problems associated with public hunting on private lands. Because enrollment in the program is public information, a means to provide the public with information on available opportunities is a requirement. However, regional personnel are responsible for and able to structure BMA's in ways to greatly reduce landowner inconvenience such as issuance off-site of permission slips or providing other means of eliminating interference with ranch work by hunters wishing to hunt a property.

Comment: (Rather than the impact payment system) I suggest that you assign a point system for use on BMA's and then add up the total points at the end of the year and divide this total into the amount of money that is available and determine the value of a point, and then pay the landowner according to the number of points he's earned during the year. That way, if you have a lot of money from the program one year, and not many people hunt on these BMA's there is going to be more money per hunter day and more money per basic impact payment and the other payments involved here. I believe that this would eliminate either overspending causing you to have to raise the resident license fees or underspending and having a lot of money left over. This way, you use up all the money you have this year and it is spread out evenly among the people that are participating.

Response: The HB 195 Incentives Committee examined a number of incentives distribution methods over a six-month period. Their recommendation which translate into the proposed amendments, reflect what was felt to be the most fair and equitable means of distributing the incentives dollars. Proposed rules give the department the authority to set compensation levels based on available funding.

Comment: A landowner could receive payments for access to state lands when a fee (recreational use permit) is already required.

Response: Access corridor payments would be made based on the use of private lands in a corridor and providing access to state lands which would otherwise not be legally accessible. Accessible state or federal lands would not qualify for access corridor payments.

Comment: One commentor expressed concern that verbal instructions given by a cooperator to hunters utilizing a BMA may be vague or inaccurate and lead to problems.

Response: This concern is covered by existing rules (ARM 12.4.208) which specifically addresses information dissemination on BMAs. The rule requires printed materials be available to hunters wishing to hunt on BMAs. Those materials must include a map of the area which clearly identifies the boundaries of the area, hunting opportunities available, use regulations of the area, method of gaining access to the area, dates the area is open to the public and indication of any state trust lands within the area which require hunters to possess a recreational use license to hunt the state lands.

Comment: People who have a (department) manager on their ranch are also experiencing a degree of disturbance and they should be entitled to full (incentive) compensation. If you do (deduct these costs from incentives payments), there are going to be a number of people who will fall out of the program.

Response: The Incentives Advisory Committee felt, and the commission and the department concur, that a significant impact lies in the management of hunters on a property. If that impact is reduced by department personnel managing hunting then the

overall impact on a ranch is reduced. There are actual costs involved in having a department manager on-site and therefore it is believed that those costs should be considered in the payment of incentives.

Comment: If you can generate enough money to enroll the acres that you have set as a goal and there is plenty of money left in the program, you should consider increasing the fee (incentives.)

Response: With the adoption of the proposed amendments, the department can change the impact payments schedule in the future if funding permits.

Comment: Current block management rules (ARM 12.4.205(1)(a)) language could allow restrictions to occur on isolated tracts of BLM land. It would clarify the regulation if it was stated that this does not apply to BLM land.

Response: This rule is not within the scope of rules under consideration. ARM 12.4.205(1)(b) requires that when lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion. ARM 12.4.205(1)(e) further states that species and gender restrictions, other than those established by the commission, may not be imposed on state or federal lands.

Comment: There is no provision to ensure that the percent of public land in a BMA is pro-rated out of the compensation formula. Landowners should not be compensated for hunter days on accessible public lands.

Response: Current Block Management rules require notification and cooperation between the department and public land management agencies for the inclusion of state or federal lands in BMA's. Proposed rules call for incentives payments to landowners for impacts on private lands as a result of public hunting or payments to landowners who are providing access to otherwise inaccessible state and federal lands.

Comment: I don't see anything in the program for monitoring bills that you are going to get. The Fish and Game should protect itself if they said there were 4 hunters that day and 4 hunters signed in, somewhere down the line, we may need to check that. Maybe it would involve a comment system, if somebody had a comment, a hunter or landowners can complain, too.

Response: The proposed amendments refer to use of hunter use documents (ARM 12.4.206(c)) which would include permission slips, sign-in rosters, surveys, check station data as well as other means of confirming hunter use on a BMA. ARM 12.4.210 outlines a specific complaint resolution system for anyone involved with BMAs, including landowners or hunters. Although outside the scope of these proceedings, some method of survey or soliciting comment would be an appropriate method of ascertaining the success of BMAs as well as providing indications on hunter and cooperator success.

Comment: Please allow more time for written comments after a public meeting. One day is not enough time for the working man.

Response: Notification of the rulemaking process as well as the dates and locations of public meetings was distributed beginning February 6, following the commission and department's proposed adoption of the rules. 1200 copies of the proposed rules were mailed out to groups and individuals across the state by March 1. In order to implement the program in time for the 1996 hunting season, the timeline for public notification, comment and the subsequent commission meeting (March 28) was such that the comment period ended immediately following the last public hearing. Under the current schedule, final rules will not go into effect until April 29, giving only 4 months for field personnel to implement the program before the fall hunting seasons.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION AND DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of Fish, Wildlife & Parks Commission and Director of Department of Fish Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of a rule describing the application process and criteria for a scientific collectors permit	))))	NOTICE OF ADOPTION

TO: All Interested Persons.

1. On February 8, 1996, the Montana Department of Fish, Wildlife and Parks published notice of the proposed adoption of the above captioned rule at page 373, 1996 Montana Administrative Register, issue number 3.

2. The department has adopted new Rule I (ARM 12.7.1201) as proposed.

3. No adverse comments or testimony were received.

RULE REVIEWER

Robert N. Lane
Rule Reviewer

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Director
of the Department of Fish, Wildlife and Parks

Certified to the Secretary of State on April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.8.1107, regarding public review of air quality preconstruction permit applications	NOTICE OF AMENDMENT OF RULE (Air Quality)

To: All Interested Persons

1. On February 22, 1996, the board published notice of the proposed amendment of ARM 16.8.1107 at page 488 of the Montana Administrative Register, Issue No. 4.

2. The board has amended the rule as proposed.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of rules 26.2.641 through 26.2.663, the Montana Environmental Policy Act for the Department of State Lands.	)))))	NOTICE OF REPEAL OF RULES (MEPA)

To: All Interested Persons

1. On February 22, 1996, the board published notice of the proposed repeal of the above-captioned rules at page 491 of the Montana Administrative Register, Issue No. 4.

2. The board has repealed the rules as proposed.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 24.29.701 through 24.29.7020 and the adoption of new rules related to workers' compensation plan one [Plan 1] requirements and eligibility	) NOTICE OF REPEAL AND) ADOPTION OF PLAN 1 RULES

TO ALL INTERESTED PERSONS:

1. On February 22, 1996, the Department published notice at pages 512 through 524 of the Montana Administrative Register, Issue No. 4, to consider the repeal of ARM 24.29.701 through 24.29.7020 and the adoption of new rules I through XVII, all related to Plan 1 requirements and eligibility.

2. On March 15, 1996, a public hearing was held in Helena concerning the proposed repeal of the existing rules and the adoption of the proposed rules. Oral and written comments were received at the hearing. Additional written comments were received prior to the closing date of March 22, 1996.

3. After consideration of the comments received on the proposed rules, the Department has repealed ARM 24.29.701 through 24.29.7020 in their entirety and has adopted the following rules as proposed.

RULE II (24.29.604) MONTANA SELF-INSURERS GUARANTY FUND--ACCEPTANCE REQUIRED

RULE III (24.29.607) PUBLIC EMPLOYERS OTHER THAN STATE AGENCIES

RULE IV (24.29.608) ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 1--ELIGIBILITY

RULE VI (24.29.610) WHEN SECURITY REQUIRED

RULE VIII (24.29.616) EXCESS INSURANCE--WHEN REQUIRED

RULE X (24.29.618) INITIAL ELECTION--EMPLOYER GROUPS

RULE XII (24.29.622) PERMISSION TO SELF-INSURE

RULE XIII (24.29.623) RENEWAL REQUIRED

RULE XIV (24.29.624) REVOCATION, SUSPENSION, TERMINATION AND WITHDRAWAL OF PERMISSION

RULE XVI (24.29.627) RIGHT TO REVIEW

RULE XVII (24.29.628) NOTIFICATION OF CHANGES IN SELF-INSURER STATUS REQUIRED

4. After consideration of the comments received on the proposed rules, the Department has adopted proposed Rule I, Rule V, Rule VII, Rule IX and Rule XI with the following changes (new matter underlined, deleted matter interlined):

RULE I (24.29.601) DEFINITIONS For the purposes of ARM 24.29.602 through 24.29.628, the following definitions apply:

(1) through (1)(a) Same as proposed.

(b) pay compensation~~,~~ benefits and all liabilities which are likely to be incurred under the Workers' Compensation and Occupational Disease Acts; and

(1)(c) through (11) Same as proposed.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-403 and 39-71-2101 through 39-71-2108 MCA

RULE V (24.29.609) ABILITY TO PAY--EVIDENCE REQUIRED

(1) Employers or employer groups electing to be self-insured shall demonstrate ability to pay ~~compensation benefits~~ by providing audited financial statements, evidence of excess insurance, if required, and a security deposit, if required, that upon analysis indicate ability to pay, as determined by the department, with the concurrence of the guaranty fund.

(2) through (3) Same as proposed.

AUTH: Sec. 39-71-203 and 39-71-2102 MCA
IMP: Sec. 39-71-403 and 39-71-2102 MCA

RULE VII (24.29.611) SECURITY DEPOSIT--CRITERIA (1) When a security deposit is required under ARM 24.29.610, it may be a surety bond, government bond, letter of credit, or certificate of deposit acceptable to the department and the guaranty fund. When a security deposit is required, the following criteria apply:

(1)(a) Same as proposed.

(b) The security deposit must name the department as obligee and must be held by the department as security for payment of all workers' compensation and occupational disease liabilities. The department, with the concurrence of the guaranty fund, shall retain a security deposit until all liabilities have been paid. In the event liabilities have not been met by the self-insurer, the department shall ~~convert the security deposit to cash in order to pay claims~~ proceed pursuant to 39-71-2108, MCA. If the self-insurer has placed multiple forms of security deposits, the department shall, at its discretion, convert the deposits needed to pay claims.

(c) through (f) Same as proposed.

AUTH: Sec. 39-71-203 and 39-71-2106 MCA
IMP: Sec. 39-71-403 and 39-71-2106 MCA

RULE IX (24.29.617) INITIAL ELECTION--INDIVIDUAL EMPLOYERS

(1) through (1)(c) Same as proposed.

(i) a new employer created from the reorganization ~~split~~

of a self-insured employer may elect to self-insure even though it has not been in existence for a period of 3 years. Such election must be made on the effective date of creation of the new employer;

(1)(c)(ii) through (1)(l) Same as proposed.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-403 and 39-71-2101 through 39-71-2103 MCA

RULE XI (24.29.621) NEW MEMBERS OF EMPLOYER GROUPS

(1) An employer group which has been self-insured for at least one year may add employers with the approval of the department, and the concurrence of the guaranty fund. New members may only be added on January 1, April 1, July 1 and October 1 ~~the annual anniversary date of the employer group's approval and at 6-month intervals~~. The employer group shall provide the following information about the new employer at least 90 days prior to the requested date of addition to the employer group:

(1)(a) through (1)(h) Same as proposed.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-403, 39-71-2101 through 39-71-2103, 39-71-2106 MCA

5. After consideration of the comments received on the proposed rules, the Department has determined not to adopt proposed Rule XV SECURITY DEPOSIT--BY EMPLOYERS OR EMPLOYER GROUPS WHO ARE NO LONGER SELF-INSURED.

6. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: A commenter appearing on behalf of the Montana Self-Insurers Guaranty Fund and the Montana Self-Insurers Association, hereinafter referred to as the "Fund", suggested the Department delete "or financial obligations" from the last line of Rule I(5). This undefined term is open to multiple interpretations and unnecessary.

Response 1: The Department agrees with this suggestion and has amended Rule I accordingly.

Comment 2: A commenter appearing on behalf of the Fund suggested the words "compensation benefits" be stricken from the third line of Rule V(1). Rule I defines "ability to pay" to include the payment of compensation benefits. The Fund believes the use of the all inclusive "ability to pay" best serves the intent of this rule.

Response 2: The Department agrees with this suggestion and has amended proposed Rule V accordingly.

Comment 3: Two commenters objected to proposed Rule V. They commented that those who do not have, or do not have a need for audited financial statements, should be allowed to submit an

actuarial study instead. The Department was encouraged to adopt a rule change that would allow a substitution of an actuarial study for audited financial statements.

Response 3: The Department has discussed these comments and the proposed amendment on numerous occasions. After a great deal of thought and consideration, the Department has concluded that audited or reviewed financial statements are necessary to provide the assurance necessary to accurately assess a company's financial condition.

An actuarial study does not provide an acceptable alternative to audited or reviewed financial statements for determining a company's financial health. An actuarial study relies exclusively upon financial statements provided by the company being analyzed - regardless of how, or by whom, they are prepared. Thus, unlike audited or reviewed financial statements, an actuarial study cannot confirm a company's financial health. Consequently, no assurance of the company's solvency is provided. The Department appreciates the comments and suggestions. However, actuarial studies will not be considered as an alternative to audited or reviewed financial statements.

Comment 4: One commenter submitted written and oral comments pertaining to the specific situation of one self-insurer with respect to the proposed Rule V. Those comments can be summarized as follows:

1. The Department has accepted actuarial studies from the self-insurer for four years.

2. The self-insurer has paid for and submitted these actuarial studies for four years.

3. As the self-insurer has no other purpose for obtaining audited or reviewed financial statements, the cost of supplying them to the Department would eliminate any savings realized by self-insuring.

4. The self-insurer is providing a high quality actuarial study. While not inexpensive, these studies provide assurance of the self-insurer's ability to cover workers' compensation claims.

5. The self-insurer has provided an irrevocable letter of credit and an excess insurance policy which are of sufficient amounts to cover any claims against it. The Fund has approved the self-insurer and has allegedly offered to cover excess claims.

Response 4: The Department has discussed and considered these comments on numerous occasions. The proposed rules are designed for all self-insurers. The Department has considered the comments and circumstances of the commenter and has concluded that it is in the best interests of all self-insurers, their

employees and the Fund, to adopt proposed Rule V as amended.

The Department responds to the self-insurer's specific comments as follows:

1 and 2. The Department acknowledges that the self-insured has provided, and the Department has accepted, its actuarial studies for the last four years.

3 and 4. The Department appreciates the information provided on behalf of the self-insurer.

5. The Department acknowledges the self-insurer has supplied an irrevocable letter of credit and excess insurance coverage.

Comment 5: A commenter appearing on behalf of the Fund suggested the sentence commencing "In the event . . . " be stricken in its entirety from Rule VII(1)(b). The commenter suggests the following sentence be substituted: "Upon the failure of the employer to pay any compensation benefits when due and payable, the Department shall take the proper steps to convert any securities on deposit or sufficient thereof into cash for the payment of the compensation benefits." The commenter believes this change more clearly defines the rule and makes the intent of the rule compatible with statute.
Response 5: The Department agrees the rule must conform to statute. However, rather than repeat the statute verbatim in the rule, the Department has amended the rule to reference Section 39-71-2108, MCA.

Comment 6: The commenter appearing on behalf of the Fund suggested Rule XV be deleted as it is unnecessary, unenforceable and in conflict with Sections 39-71-2106 and 39-71-2108, MCA. The Fund believes that any attempt to enforce this rule would result in unfavorable legal action against the Department.
Response 6: The Department agrees that Rule XV is unnecessary and may be unenforceable. Therefore, the Department has determined not to adopt this proposed rule.

Comment 7: Several commenters noted the potential restrictiveness of proposed Rule XI. Two criteria within Rule XI are viewed as too restrictive for groups adding new members. Various suggestions were made. First, groups should be allowed to add members more frequently than at six month intervals. One commenter suggested the interval be changed to quarterly. Second, the due date for application materials should be reduced from 90 days prior to the proposed date for membership.
Response 7: The Department partially agrees and will allow new members to be added to groups on a quarterly basis. Groups will be allowed to add members on January 1, April 1, July 1 and October 1. However, the Department will retain the requirement that application materials be submitted 90 days prior to the proposed start date of the new self-insuring group member.

Comment 8: One commenter suggested the Department develop a simplified "short-form request" that could be used by groups when adding new members.
Response 8: The Department is developing a revised application form designed to gather information unique to public sector entities and to streamline the process of adding new members.

7. The new rules and repeals will be effective May 1, 1996.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 1996

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the transfer of Rule 26.2.502 pertaining to rental royalty and other charges on state land	NOTICE OF TRANSFER

TO: All Interested Persons.

1. Pursuant to Section 500, Chapter 418, Laws of Montana 1995, effective July 1, 1995, policies and objectives in the rules concerning rental royalty and other charges on state land are transferred from the Department of State Lands to the Department of Natural Resources and Conservation. In order to implement that legislation, ARM 26.2.502, is transferred to the administrative rules of the Department of Natural Resources and Conservation.

2. The Department of Natural Resources and Conservation has determined that the transferred rule will be numbered as follows:

OLD	NEW	
26.2.502	36.2.1005	Minimum Easement Charges

3. The transfer of Rule 26.2.502 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995.

BOARD OF LAND COMMISSIONERS
MARC RACICOT, CHAIR

BY: _____
ARTHUR R. CLINCH, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

_____
DONALD D. MacINTYRE, REVIEWER

Certified to the Secretary of State April 15, 1996.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 36.19.104, pertaining to the reclamation and development grants program	) CORRECTED NOTICE OF) AMENDMENT))

To: All Interested Persons.

1. On January 25, 1996, the agency published a proposed notice of amendment for ARM 36.19.104 pertaining to the reclamation and development grants program, at page 228 of the 1996 Montana Administrative Register, Issue No. 2. On March 21, 1996, the agency published a notice of amendment at page 775 of the Montana Administrative Register, Issue No. 6, of the amendment of ARM 36.19.104.

2. The reason for the correction is to add an explanation of the "other" category to rule 36.19.104. This category is referenced throughout the sub-chapter and the description was inadvertently deleted in the amendment. The corrected rule reads as follows:

36.19.104 APPLICATION CATEGORIES Subsections (1) through (4) remain the same.

(5) Projects categorized as "other" shall only be recommended for funding if they are qualified and only to the extent that there are funds remaining after funding recommendations are made in the mineral development impacts and crucial state need categories.

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1112, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on March 31, 1996.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State on April 15, 1996.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 36.20.102 through 36.20.308, and the repeal of rule 36.20.101A, pertaining to weather modification	NOTICE OF AMENDMENT AND REPEAL

To: All Interested Persons.

1. On February 8, 1996, the department published notice of the proposed amendment of rules 36.20.102 through 36.20.308, and the proposed repeal of rule 36.20.101A, pertaining to weather modification, at page 381 of the 1996 Montana Administrative Register, Issue No. 3.

2. The department has amended rules 36.20.102 through 36.20.308 as proposed.

AUTH: 85-3-102, MCA
IMP: 85-3-102, MCA

3. The department has repealed rule 36.20.101A, found on page 36-4221, of the Administrative Rules of Montana, as proposed.

AUTH: 85-3-102, MCA
IMP: 85-3-201, MCA

4. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State on April 15, 1996.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of Rule 36.22.305, pertaining to naming of pools, Rule 36.22.1245, pertaining to illegal production, Rule 36.22.1307, pertaining to restoration of surface, and Rules 36.22.1601 through 36.22.1611, pertaining to regulations to implement the Natural Gas Policy Act	)))))))	**NOTICE OF REPEAL**

TO: All Interested Persons.

1. On January 25, 1996, the Board of Oil and Gas Conservation published notice of the proposed repeal of rule 36.22.305, pertaining to naming of pools, rule 36.22.1245, pertaining to illegal production, rule 36.22.1307, pertaining to restoration of surface, and rules 36.22.1601 through 36.22.1611, pertaining to regulations to implement the Natural Gas Policy Act at page 232 of the 1996 Montana Administrative Register, issue number 2.

COMMENT: Representatives of the Montana Petroleum Association, a division of Rocky Mountain Oil and Gas Association, suggest that the Board of Oil and Gas not repeal Rule 36.22.1245, pertaining to illegal production, or Rule 36.22.1307, pertaining to restoration of surface. The MPA members recommend that having the provision requiring production from any spacing unit or pool to be done in accordance with rules and orders of the Board adds clarity to the statutes and that having the provision for surface restoration included in the rules keeps continuity with the statutes and keeps that provision in the body of the rules section which may be the single document an operator or contractor reviews.

RESPONSE: The Board of Oil and Gas has accepted the suggestion from the MPA to clarify the rules, and will not repeal Rules 36.22.1245 and 36.22.1307.

2. The board has repealed rules 36.22.305, and 36.22.1601 through 36.22.1611, found on pages 36-4839, and 36-5091 through 36-5097, respectively, of the Administrative Rules of Montana.

AUTH: 2-4-201 and 82-11-111, MCA
IMP: 2-4-201, MCA

BOARD OF OIL AND GAS CONSERVATION

THOMAS P. RICHMOND, ADMINISTRATOR

DONALD D. MacINTYRE, RULE REVIEWER

Certified to the Secretary of State April 15, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.11.103, 42.11.302, 42.11.303, 42.11.304, 42.11.408, and 42.11.427 relating to Liquor Privatization Rules) NOTICE OF REPEAL

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed repeal of ARM 42.11.103, 42.11.302, 42.11.303, 42.11.304, 42.11.408 and 42.11.427 relating to liquor privatization at pages 66 of the 1996 Montana Administrative Register, issue no. 1.

2. No public comments were received regarding these rules.

3. The Department has repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT to ARM 42.15.401 and ADOPTION of RULE I (ARM 42.15.601), RULE II (ARM 42.15.602), RULE III (ARM 42.15.603), and RULE IV (ARM 42.15.604) relating to Medical Savings Account	NOTICE OF ADOPTION OF RULES and AMENDMENT to ARM 42.15.401

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed amendment to ARM 42.15.401 and adoption of new rules I through IV (ARM 42.15.601 through 42.15.604) relating to medical savings accounts at page 61 of the 1996 Montana Administrative Register, issue no. 1.

2. No Public Hearing was held on these rules. However, the Department has received both oral and written comments from the public relating to the proposal. As a result of the comments received the Department has adopted Rule IV ARM 42.15.604 as proposed and amends ARM 42.15.401; Rule I (ARM 42.15.601); Rule II (ARM 42.15.602); Rule III (ARM 42.15.603) as follows:

42.15.401 DEFINITIONS (1) "Account administrator" means any person, partnership, limited liability company, limited liability partnership or corporation that acts as a third party fiduciary to administer a medical savings account AND IS EITHER A BANK, SAVINGS & LOAN, CREDIT UNION, OR TRUST COMPANY, A HEALTH CARE INSURER, A CERTIFIED PUBLIC ACCOUNTANT OR AN EMPLOYER WHO IS SELF-INSURED UNDER ERISA.

(2) through (8) remain the same.

(9) "Last business day" means the last ~~business~~ day of the ~~calendar year~~ ACCOUNT ADMINISTRATOR'S BUSINESS YEAR.

(10) remains the same.

(11) "IMMEDIATE FAMILY MEMBER" MEANS ANY INDIVIDUAL WHO IS A LINEAL DESCENDENT OF THE ACCOUNT HOLDER AND ALSO INCLUDES THEIR SPOUSE. STEPCHILDREN ARE CONSIDERED LINEAL DECEDENTS IF THAT RELATIONSHIP WAS CREATED BEFORE THE CHILD'S EIGHTEENTH BIRTHDAY.

(12) "LONG TERM CARE" MEANS A PERIOD OF NOT LESS THAN 12 CONSECUTIVE MONTHS IN WHICH A NECESSARY OR MEDICALLY NECESSARY DIAGNOSTIC, PREVENTIVE, THERAPEUTIC, REHABILITATIVE, MAINTENANCE, OR PERSONAL CARE SERVICE IS PROVIDED IN A SETTING OTHER THAN AN ACUTE CARE UNIT OF A HOSPITAL.

RULE I (ARM 42.15.601) MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) remains the same.

~~(2) Every person, partnership, limited liability company, limited liability partnership and corporation that acts as a third party fiduciary to administer a medical savings account from which the payment of eligible medical claims are made is required to register on a form provided by the department.~~

(3) through (6) are renumbered (2) through (5).

RULE II (ARM 42.15.602) MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) through (5) remain the same.

(6) Failure to remit any withheld penalties within the time provided is considered to be an ~~illegal~~ UNLAWFUL conversion of trust money. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

RULE III (ARM 42.15.603) MEDICAL SAVINGS ACCOUNT - WITHDRAWALS (1) The funds held in a medical savings account may be withdrawn by the account holder at any time for eligible medical expenses. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the 10% penalty.

(2) Requests made by account holders for withdrawals to pay for eligible medical expenses must be supported by AN ITEMIZED STATEMENT OF EXPENSES ~~copies of eligible medical expenses~~ that were either paid or charged by the account holder AND THE SIGNATURE OF THE ACCOUNT HOLDER ATTESTING THAT THESE EXPENSES ARE "ELIGIBLE MEDICAL EXPENSES". An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the Internal Revenue Code.

(3) The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator.

(4) There shall be a penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses EXCEPT UPON THE DEATH OF THE ACCOUNT HOLDER. The penalty shall be ten percent of the amount of the withdrawal from the account and, in addition, the amount withdrawn shall be taxed as ordinary income.

(5) The direct transfer of funds from a medical savings account to a medical savings account with a different account administrator shall not be considered a withdrawal for purposes of this rule. A DIRECT TRANSFER IS WHEN MONIES IN AN ACCOUNT ARE TRANSFERRED TO A NEW ACCOUNT WITHOUT THE BENEFICIARY OR ACCOUNT HOLDER RECEIVING ANY FUNDS.

(6) Withdrawals made on the last business day are not subject to the ten percent penalty but shall be taxed as ordinary income.

(7) Except as provided in (8) all payments made from a medical account must be made payable to the account holder, ~~or~~ to their estate OR TO THEIR LEGAL GUARDIAN.

(8) If an agreement exists between the account holder, account administrator and the payee, withdrawals for eligible medical expenses can be done electronically.

(9) ALL MEDICAL RECORDS AND EXPENSES ARE TO BE KEPT CONFIDENTIAL BY THE ACCOUNT ADMINISTRATOR UNLESS AUTHORIZATION IS GIVEN BY THE ACCOUNT HOLDER.

3. Oral and written comments received are summarized as follows along with the responses of the Department:

COMMENT: ARM 42.15.401(5). The term "dependent" could be simply stated as an individual who is claimed or could be claimed as an exemption for income tax purposes.

RESPONSE: No major revisions are being proposed to this rule. The minor changes that were made are a result of some housekeeping which is required for all agencies under the statutes.

COMMENT: Rule III(5), should be amended to add the term "direct transfer of funds".

RESPONSE: The Department concurs and a definition will be added to state "a direct transfer is when monies in an account are transferred to a new account without the beneficiary or account holder receiving any funds".

COMMENT: ARM 42.15.401(9). The definition of "last business day" appears to be vague in that it does not define whose last business day is being referenced. A fiscal year account administrator would have two "last business days". As is, the proposed regulation will only cause grief for the account administrator and is unnecessary.

RESPONSE: The Department agrees. The "last business day" is the last day of the account administrator's business year. To prevent any confusion between the account administrator and the account holder, the account administrator is required to notify the account holder in writing within 30 days after an account is opened stating what day is the "last business day" of the account administrator.

COMMENT: Rule I(2) appears to be redundant. "Account administrator" is defined in section (1) and does not have to be defined again.

RESPONSE: The Department concurs and the rule is amended to correct that redundancy.

COMMENT: Rule III(7) should also make payments allowable to guardians of account holders. The purpose is that if an account holder became incapacitated, a guardian could cash checks from the account.

RESPONSE: The Department agrees and will add language to allow "legal guardians" to be able to receive payments if the account holder is incapacitated.

COMMENT: It seems that the legislative intent was to

combine the benefit of the medical savings account law and section 15-30-111(2)(h), MCA, to provide both an exclusion for the insurance premiums paid and the use of the $3,000 medical savings account exclusion. Is the $3,000 limitation that can be contributed to a medical savings account in addition to that amount excluded under section 15-30-111(2)(h), MCA, or IRC section 106, or is the $3,000 limitation reduced by any exclusion?

RESPONSE: No. The $3,000 limitation for a medical savings account is not reduced by the amount deducted under section 15-30-111(2)(h), MCA. Clearly, it was the legislative intent with the enactment of the medical savings account plan to allow a person, who is eligible, to take both deductions to their full extent. However, it was also the intent of the legislature that a person not receive a double deduction.

COMMENT: The medical savings account legislation requires that the account holder be a resident of Montana. What is the result if an account holder becomes a nonresident? Is the entire principal and accrued interest in the account immediately taxable or is it taxable at some future point in time? Is the withdrawal Montana source income if the account holder is a nonresident?

RESPONSE: Under section 15-30-131, MCA, nonresidents are treated like residents and are allowed the same deductions as a resident in arriving at taxable income. Therefore, there is not a taxable event unless the account holder withdraws the monies for a non-medical purpose. In that case, it becomes taxable to Montana if there was a deduction taken previously on the Montana return.

COMMENT: Can an account administrator be a nonresident? If an account administrator can be a nonresident, can an account be transferred to a nonresident account administrator?

RESPONSE: Yes, an account administrator can be a nonresident. The law states that a CPA who is licensed to practice in Montana can be an account administrator. This allows a nonresident who is a CPA and licensed in Montana to be an account administrator. Since an account administrator can be a nonresident, it follows that an account can be transferred to a nonresident account administrator who is registered with the Department of Revenue. If the account administrator is not registered with Montana, the account cannot be transferred to him.

COMMENT: Upon the death of an account holder and the distribution of the monies in the account to the estate, what is the tax effect? Are the monies exempt from tax? If the income is not tax exempt, may arrangements be made for the estate to

transfer the medical savings account to an immediate family member with current exemption and potential future tax liability upon withdrawal?

RESPONSE: Under the tax benefit rule, the monies would be taxable to the estate if they were taken as a deduction by the decedent. Even though a tax-exempt transfer to one or more of the heirs would be advantageous, it is not allowed under present law.

COMMENT: Upon the death of the account holder, would the account be subject to the 10% penalty if the monies were paid to a beneficiary?

RESPONSE: The intention is not to penalize the beneficiary because of the death of the account holder. The Department will provide for an exception to the penalty in case of death.

COMMENT: The term "immediate family member" needs to be defined so that future differences of opinion can be avoided.

RESPONSE: The term "immediate family member" means individuals who are lineal decedents of the account holder and their spouse. Stepchildren are considered lineal decedents if that relationship was created before the child's eighteenth birthday. The Department amended ARM 42.15.401 by adding (11) as a definition for this phrase.

COMMENT: The term "long term care" needs to be defined since it is not defined in either the law or in the regulations.

RESPONSE: Long term care means a period of not less than 12 consecutive months in which a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service is provided in a setting other than an acute care unit of a hospital. The Department amended ARM 42.15.401 to cover this issue.

COMMENT: The proposed rule requires an account holder to provide "documentation of eligible medical expenses" to the account administrator. It would be in the best interests of the public to add a provision that makes the medical records and expenditures confidential.

RESPONSE: The Department concurs. A new subsection has been added that states "all medical records and expenses of the account holder are to be kept confidential by the account administrator unless otherwise authorized by the account holder".

COMMENT: If the Department, in addition to the 10% penalty, would have withholding on the amounts withdrawn that were taxable, it would be better able to ensure the

collectability of taxes on that income.

RESPONSE: There are no provisions under the law for mandatory withholding. However, if the account administrator and account holder want to enter into an agreement to voluntarily withhold money on taxable amounts withdrawn, the Department will accept the monies.

COMMENT: The citizens would be better served if there were penalties imposed on account administrators who do not meet the registration, reporting or other requirements proposed by the regulations.

RESPONSE: Under the law, there are no penalties on account administrators, thus we cannot implement any through rules.

COMMENT: The law states that account holders "may" submit documentation of eligible medical expenses paid to the account administrator for payment. Rule III(3), states that the "burden of proving that a withdrawal from a medical savings account is upon the account holder and not the account administrator". How can the Department interpret the term "may" to impose a burden of proof? Will the proposed regulation make the account administrator a finder of fact in a potential dispute about whether an item of expense is an eligible medical expense as defined by the Internal Revenue Code? If the account administrator is wrong, they may be held liable for breach of contract. A possible alternative would be for a regulation that would allow the account administrator to pay a questionable claim, but then notify the Department that there was a dispute. The Department then could make its own finding of fact.

RESPONSE: The Department feels that to ease the burden of proving that every withdrawal request is an "eligible medical expense", the account administrator could create a form on which the account holder specifies the medical expense and the dollar amount requested to be reimbursed. At the bottom of the form, the account holder would be required to sign stating that the above items were unreimbursed, allowable "eligible medical expenses". If the account administrator felt that the items claimed are not valid medical expenses, they should pay the claim and then contact the Department. The proposed rule will be amended in Rule II (ARM 42.15.603(2)) to state that account holder claims must be supported by an itemization of eligible medical expenses and attest to the correctness of the expense.

COMMENT: The proposed definition of "Account Administrator" under ARM 42.15.401 is unlimited as to the entities who qualify, while, the controlling statute, section 15-61-102, MCA, limits the definition to: 1) banks, savings & loans, credit unions, and trust companies; 2) health care insurers; 3) certified public accountants; and 4) an employer if they are self-insured under

ERISA. Should this be amended or deleted?

RESPONSE: The Department concurs. Language will be added to ARM 42.15.401(1) so only those entities are eligible.

COMMENT: Rule II(6) provides that "a failure to remit any withheld penalties within the time provided is considered to be an illegal conversion of trust money". This statement is beyond the rule making authority of the Department in that the statute in question imposes no such penalty which is criminal in nature.

RESPONSE: The Department will strike "illegal" and replace it with "unlawful".

COMMENT: Proposed Rule IV imposes personal liability upon "officers and owners" of banks and other entities acting as "account administrators". The law contains no provision or language imposing or authorizing the imposition of such personal liability. Without a supporting statute the Department lacks the authority or rule making power to impose personal liability upon the officers or shareholder of a bank.

RESPONSE: Section 15-61-203(2), MCA, states in part "[T]he administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue . . . ." The account holder is acting as a fiduciary for the Department and the employee when they withhold penalty monies from a withdrawal. In acting in such a capacity, the account administrators are responsible for those monies.

4. Therefore, the Department adopts the rule with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.101, 42.17.103, 42.17.112, 42.17.113, 42.17.114, 42.17.118, 42.17.121, 42.17.145, 42.17.147, 42.17.148, 42.17.149, 42.17.401, and 42.17.403 and REPEAL of ARM 42.17.102, 42.17.104, 42.17.115, 42.17.116, 42.17.117, 42.17.146 and 42.17.201 and ADOPTION of NEW RULES I (ARM 42.5.210); II (ARM 42.5.211); III (ARM 42.5.212); IV (ARM 42.5.213) relating to Withholding and Old Fund Liability Taxes	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed amendment, adoption, and repeal of rules relating to Title 42, Chapter 17 dealing with withholding and old fund liability taxes at page 97 of the 1996 Montana Administrative Register, issue no. 1.

2. A public hearing was held on February 7, 1996. No testimony was presented at the hearing but subsequent to that hearing written comments were received and are summarized as follows along with the response of the Department:

COMMENT: Patricia De Vries, CPA, contacted the Department protesting the requirement that all new employers are required to send monthly payments.

RESPONSE: Prior to enactment of House Bill 293, if an employer withheld less than $10 per quarter state income tax, the payment was not due until February 28 (the same time wage statements (W-2's) were due).

The intent of House Bill 293 was to simplify employer requirements by paralleling federal due dates and remittance requirements and facilitating more efficient processing of tax payments.

Although the federal deposit rule is that new employers must follow a monthly schedule, under a federal "de minimis rule", an employer's obligation is satisfied if the total amount of accumulated employment taxes for the quarter is less than $500 and the amount is fully deposited or paid with a timely filed return for the quarter.

Both the state and the employer incur costs associated with processing payments. In the case of de minimis payments, it may

cost more to process the check than will be realized by the state.

On an exception basis, it makes sense to have a $100 de minimis rule for state purposes based on an employer estimate of the total annual withholding and old fund liability tax liability. If, during the year, the tax liability exceeds $100, the total amount must be deposited with the state and monthly payments resume. The responsibility to monitor the tax liability necessarily lies with the employer.

Cost benefit, for both the employer and the state, and consistency and materiality are the basis for amendment to the rules. Employers and the state will benefit from the rule.

3. The Department has amended the rule as follows:

42.17.113 REPORTS AND PAYMENTS (1) through (8) remain the same.

(9) DE MINIMIS EXCEPTION: IF AN EMPLOYER'S ESTIMATED ANNUAL STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX LIABILITY IS NOT EXPECTED TO EXCEED $100 FOR THE CALENDAR YEAR, THE EMPLOYER MAY APPLY TO THE DEPARTMENT OF REVENUE TO REMIT AND FILE ON THE ANNUAL REPORT AND REMITTANCE SCHEDULE. IF, DURING THE YEAR, THE COMBINED LIABILITY EXCEEDS $100, THE EMPLOYER MUST REMIT THE TOTAL AMOUNT DUE AND BEGIN TO REMIT ON A MONTHLY BASIS FOR THE REMAINDER OF THE CALENDAR YEAR. THE EMPLOYER IS RESPONSIBLE FOR MONITORING THE ACCRUED COMBINED TAX LIABILITY.

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-204, 15-30-210, 15-30-211 and 39-71-2503 MCA.

4. Therefore, the Department has adopted the remaining rules as proposed and adopts ARM 42.17.113 with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.401, 42.19.402, 42.19.1240 and REPEAL of ARM 42.19.201 and 42.19.202 relating to the Low Income Property Rules and Income and Property Tax Relief Rules	NOTICE OF AMENDMENTS AND REPEAL OF RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed amendment of ARM 42.19.401, 42.19.402, 42.9.1240 and the repeal of ARM 42.19.201 and 42.19.202 relating to low income property rules and income and property tax relief rules at page 87 of the 1996 Montana Administrative Register, issue no. 1.

2. No public comments were received regarding these rules.

3. The Department has amended and repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of RULE I (ARM 42.20.154), AMENDMENT of ARM 42.20.134, 42.20.135, 42.20.139, 42.20.146, 42.20.147, 42.20.150, 42.20.201, 42.20.202, 42.20.204, 42.20.205, and REPEAL of ARM 42.20.113, 42.20.114, 42.20.115, 42.20.116, 42.20.133, 42.20.158 relating to Real Property	NOTICE OF ADOPTION, AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed adoption, amendment and repeal of rules for Title, 42, Chapter 20 relating to real property at page 107 of the 1996 Montana Administrative Register, issue no. 1.

2. A Public Hearing was held on February 7, 1996, to consider the proposed adoption, amendments and repeal. No one appeared to testify. However, a written comment was received from Senator Ken Mesaros and the Montana Stockgrowers Association within the prescribed time for public comments. Those comments and the Department's response are summarized below:

COMMENT: There were two assumptions made in the intent of SB 138 - 1) If the counties determined the value previously, then they would continue to do so after passage of SB 138. 2) If you shift market value to productive level, there should be a tax reduction, that was reflected in the fiscal note that accompanied this legislation.

The adoption of Rule 1(2) which relates to the valuation of one acre beneath agriculture improvements and improvements on agricultural land may be inconsistent with the intent of SB 138. SB 138 was introduced to relieve agricultural producers from escalating property taxes on one acre farmsteads which resulted from legislation passed in the 1993 Montana legislature.

The intent of SB 138 was to appraise the one acre beneath agricultural improvements at a similar value to the agriculture land associated with the agricultural operation being appraised. The references in 15-7-202(1)(c)(ii) and 15-7-206(2), MCA, were intended to appraise the one acre under the same ownership as agricultural land and valued at the class with the highest value and production capacity under the same ownership.

Proposed Rule I(2) could be interpreted to value the one acre at the highest productive value and production capacity of agricultural land statewide. In other words, an agricultural operation under the same ownership could receive a valuation for the one acre farmstead based upon a classification of agricultural property that's not under the producer's ownership.

For example, an agricultural producer may have dryland farm ground and grazing land. The intent of SB 138 was to value the one acre farmstead at the highest value and productive capacity under his or her ownership. Proposed Rule I(2) could be interpreted to value the one acre farmstead at the highest classification for irrigated lands statewide. This result is not the intent of SB 138, nor reflective of the legislative history.

The intent of SB 138 was to take into consideration classification differences and regional difference in agricultural lands. The proposed Rule I may result in increased taxes in certain areas of the state if an across the board approach is used. Reconsideration of the proposed rule should take place in light of the intent and legislative history.

RESPONSE: The Department believes that 15-7-206(2), MCA, is quite clear in expressing the intent of the legislature in valuing the one acre site at the valuation of the highest valued agricultural land in the state. There is no modifying language to indicate that it should be determined by the value of either the highest valued agricultural land in the individual property ownership or the highest valued agricultural land in the county.

3. The Department has adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.122, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.156, 42.21.158, 42.21.301, 42.21.302, 42.21.303, 42.21.304, 42.21.305, 42.21.310 and REPEAL of 42.21.309 and 42.21.313 relating to Personal Property	NOTICE OF AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On December 7, 1995, the Department published notice of the proposed amendment and repeal of rules for personal property at page 2653 of the 1995 Montana Administrative Register, issue no. 23.

2. A Public Hearing was held on January 3, 1996, to consider the proposed amendments and repeals. Testimony received at the hearing and subsequently are summarized along with the Department's comments below:

COMMENT: Mr. Bob Gilbert, representing the Montana Tow Truck Association, was concerned that the proposed rule for trucks, ARM 42.21.106, gave far less tax relief to trucks over 1.5 tons. If the Department keeps the old depreciation schedule and the Class 8 tax rate reduction mandated by Senate Bill 417, the tax relief would be considerably more that what will happen under the proposed rule change.

RESPONSE: Mr. Gilbert is correct. According to the Truck Blue Book and depreciation calculations using that valuation book, the rate of depreciation for used trucks has declined. Used trucks, according to the Truck Blue Book, have held their value or have increased in value in recent years. That fact is also reflected in the depreciation schedules. Nonetheless, the value of used trucks will show decreases for 1996, just not as much had the Department not updated the depreciation schedule. Each year, the Department calculates a new depreciation schedule, using the Truck Blue Book. To end that practice and freeze the depreciation schedule would seem to be in violation of 15-8-111 and 15-8-201, MCA, which mandate we determine market value on a yearly basis. In conclusion, the depreciation schedule changes and the methodology to calculate those depreciation changes are done each year to reflect current market value in compliance with current law.

COMMENT: Mr. Gilbert, representing the Montana Tow Truck Association, was concerned that the Truck Blue Book did not accurately reflect the Montana market. He believes the book cannot reflect the value without acknowledging each market area. Mr. Gilbert also indicated that perhaps the NADA guide should be used.

RESPONSE: A review of the 1996 Truck Blue Book indicates the book has regional adjustments. Montana is in Region C. Had we used these regional adjustments, the value on all trucks over 1.5 tons would have been increased by 8%. The Truck Blue Book is much more comprehensive than NADA's, listing more make and models and adjustments to basic models. The Truck Blue Book's historical use is well established. Mr. Gilbert or any taxpayer may review the Truck Blue Book or the NADA book at any of our appraisal/assessment offices across the state or at the Division office in Helena.

COMMENT: Mr. Gilbert, representing the Montana Tow Truck Association, indicated that, after House Bill 363 was tabled in the Senate Taxation Committee, it was understood the entire issue of truck and automobile taxation was going to be discussed during the interim to work toward a valuation solution that was acceptable to all parties. Mr. Gilbert had not been informed of any attempts to work on the issue.

RESPONSE: The Revenue Oversight Committee decided to aggressively pursue the issue of truck and automobile taxation. The committee called for the creation of an interim work group. That group was formed on January 10, 1996 and is composed of members of the trucking and automobile industry, including Mr. Bob Gilbert of the Montana Tow Truck Association, Mr. Ben Havdahl of the Montana Motor Carriers Association, Mr. Steve Turkiewicz of the Montana Automobile Dealers Association, Mr. Dan Wyrick of Mergenthaler's Transfer and Storage, Mr. Dale Clark of the Montana Grain Grower's Association, as well as representatives of state and local government. The intent of the interim work group/committee is to review all aspects of motor vehicle taxation, make recommendations to the Revenue Oversight Committee, and draft proposed legislation if appropriate.

COMMENT: Mr. Gilbert, representing the Montana Tow Truck Association, expressed concern that we were already applying the rule yet it is only a proposed rule.

RESPONSE: The rule was promulgated and proposed in 1995 for application in the 1996 tax year. However, the actual hearing and public review did not take place until January 3, 1996. The proposed changes and the methods to calculate those changes have been used for at least two decades. They are part

of a long standing practice of the Department and are required by law. Using the old schedule and not changing depreciation percentages or years may have resulted in incorrect levels of depreciation being given to trucks. For instance, the new proposed schedule gives a 1994 truck a 36% depreciation rate (% good), whereas if we had kept the old schedule, a 1994 truck would have been depreciated at 41% good. The result would have been a higher value in 1996 compared to 1995.

COMMENT: Bob Gilbert, representing the Montana Tow Truck Association, Milo Casagrande, a tow truck operator from Miles City, and Ben Havdahl, representing the Montana Motor Carrier's Association expressed concern that the department's schedule actually increased the amount of taxes the truck owners would be paying in 1996. Several examples, spreadsheets and handouts attempted to reflect that concern.

RESPONSE: The valuation of property is but one component of many that have an effect on property taxes. In effect, the changes to the depreciation schedules, as proposed in these rules, simply mean the reduction in value, and possibly taxes, will not be as great as it would have been had we used the old schedule and simply adjusted the years on the old schedule. However, this would not have reflected the historical practice of updating the schedule on a yearly basis nor would it have been in compliance with statutes mandating use of current market value. The Truck Blue Book, for several years, has shown a reduction in the rate of depreciation of used trucks. That trend is reflected in this year's rule and depreciation schedule changes.

We also prepared a spreadsheet that reflects the changes in depreciation percentages over the past ten years. This spreadsheet and the corresponding depreciation schedules are available for review in the Department of Revenue, Office of Legal Affairs, as part of the official file on this administrative rule hearing.

3. The Department has amended and repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.23.111, 42.23.203, 42.23.416, 42.23.417, 42.23.602, 42.23.604, 42.24.101, 42.24.107, 42.24.108, 42.24.122, 42.24.201 relating to General and Special Provisions for Corporation License Tax) NOTICE OF REPEAL OF RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed repeal of ARM 42.23.111, 42.23.203, 42.23.416, 42.23.417, 42.23.602, 42.23.604, 42.24.101, 42.24.107, 42.24.108, 42.24.122, and 42.24.201 relating to corporation license taxes at pages 68 of the 1996 Montana Administrative Register, issue no. 1.

2. No public comments were received regarding these rules.

3. The Department has repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF ADOPTION
of RULE I (ARM 42.23.504),)
II (ARM 42.23.505), and III)
(ARM 42.23.506) relating to)
Infrastructure User Fee Credit)

TO: All Interested Persons:

1. On February 22, 1996, the Department published notice of the proposed adoption of new rules I through III relating to Infastructure User Fee Credit at page 538 of the 1996 Montana Administrative Register, issue no. 4.

2. No public comments were received regarding these rules.

3. The Department has adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.35.101, 42.35.104, 42.35.312, 42.35.323, 42.35.333, 42.35.512, 42.35.513, 42.35.514, 42.35.515, 42.35.516, 42.35.517, 42.35.518, 42.35.519 and REPEAL of ARM 42.35.313, 42.35.314, 42.35.315 relating to Inheritance Tax Rules	NOTICE OF AMENDMENT AND REPEAL OF INHERITANCE TAX RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed amendment of ARM 42.35.101,42.35.104, 42.35.312, 42.35.323, 42.35.333, 42.35.512, 42.35.513, 42.35.514, 42.35.515, 42.35.516, 42.35.517, 42.35.518, 42.35.519 and repeal of ARM 42.35.313, 42.35.314, 42.35.315 relating to Inheritance Tax Rules at page 91 of the 1996 Montana Administrative Register, issue no. 1.

2. Written comments were received from Junkermier, Clark, Campanella and Stevens, P.C. and are summarized as follows along with the response of the Department:

COMMENT: ARM 42.35.101. The wording "shall not include" in sections six and seven is confusing. "Shall not include" is a double negative. It is suggested that the wording be changed.

RESPONSE: The Department concurs and will delete the wording "shall not include" from subsections 6 and 7 of ARM 42.35.101.

3. The Department has further amended ARM 42.35.101 to comply with the comments received. Additionally, the Department is amending ARM 42.35.512 to clarify the sections referred to in (1). Those amendments are as follows:

42.35.101 DEFINITIONS (1) through (5) remain the same.

(6) "Expense of funeral", as used in ARM 42.35.312, shall include only those reasonable funeral expenses actually paid by the estate. The deduction for funeral expenses paid ~~shall not include or~~ must be reduced by the amount of any lump sum death payments received by the estate that are used by the estate to pay funeral expenses.

(7) "Expense of last illness", as used in ARM 42.35.312, shall include only those reasonable expenses of last illness due and owing by the decedent at the date of the decedent's death. The deduction for medical expenses paid ~~shall not include or~~ must be reduced by the amount of any death benefit or insurance

received by the estate that is used by the estate to pay medical expenses.

(8) remains the same.

42.35.512 GROSS CASH RENTAL (1) Gross cash rental is the total amount of cash received for the use of actual tracts of comparable farm real property in the same locality as the property being specially valued during the period of one calendar year. This amount is not diminished by the amount of any expenses or liabilities associated with the farm operation or the lease. See ARM 42.35.519 for a definition of comparable property and rules for property on which buildings or other improvements are located and farms including multiple property types. Only rentals from tracts of comparable farm property which are rented solely for an amount of cash which is not contingent upon production are acceptable for use in valuing real property under 72-16-335, MCA. The rentals considered must result from an arm's length transaction as defined in ~~this section~~ ARM 42.35.514. Additionally, rentals received under leases which provide for payment solely in cash are not acceptable as accurate measures of cash rental value if involvement by the lessor (or a member of the lessor's family who is other than a lessee) in the management or operation of the farm loan extent which amounts to material participation under the provisions of 72-16-331, MCA, is contemplated or actually occurs. In general therefore rentals for any property which qualifies for special use valuation cannot be used to compute gross cash rentals under ~~this section~~ 72-16-335, MCA, because the total amount received by the lessor does not reflect the true cash rental value of the real property.

4. Therefore, the Department adopts and repeals the rules as proposed and adopts ARM 42.35.101 and 42.35.512 with the additional amendments listed above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.36.101, 42.36.102, 42.36.103, 42.36.201, 42.36.202, 42.36.211, 42.36.212, 42.36.404, 42.36.405, 42.36.406, 42.36.407, 42.36.408, 42.36.501, and 42.36.502 and REPEAL of ARM 42.36.213, 42.36.214, 42.36.215, 42.36.216, 42.36.217, and 42.36.218 relating to Inheritance Taxes	NOTICE OF AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On January 11, 1996, the Department published notice of the proposed amendment and repeal of rules for chapter 36 of Title 42 as shown above relating to inheritance taxes at pages 70 of the 1996 Montana Administrative Register, issue no. 1.

2. A Public Hearing was held on February 6, 1996, to consider the proposed amendments and repeals. No one appeared to testify and no written comments were received.

3. The Department has amended and repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 15, 1996

VOLUME NO. 46 OPINION NO. 15

CITIES AND TOWNS - Authority to use excess cash to create irrevocable trust fund;
INITIATIVE AND REFERENDUM - Effect of referendum on matter beyond authority of local government;
PUBLIC FUNDS - Authority of city to use excess cash to create irrevocable trust fund;
TAXATION AND REVENUE - Propriety of city levying taxes when it has cash surplus;
MONTANA CODE ANNOTATED - Sections 7-1-4124, 7-5-131(2)(a), 7-6-202, -4133, -4222, -4229, -4230, -4240, -4601, 7-7-4264, 17-6-204, 90-5-109;
MONTANA CONSTITUTION - Article III, section 5; article XI, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 20 (1987), 40 Op. Att'y Gen. No. 17 (1983), 39 Op. Att'y Gen. No. 55 (1982).

HELD: A city with general government powers must add any excess cash balance into the calculation of its annual budget and may not use such cash to create a ten-year irrevocable trust fund operated by a third-party trustee.

April 3, 1996

Mr. Lee Kerr
Forsyth City Attorney
P.O. Box 69
Forsyth, MT 59327

Dear Mr. Kerr:

You have requested my opinion on a question which I have phrased as follows:

> May a city with general government powers, which established a trust fund from previously unbudgeted, nontax revenues, disregard those revenues in determining the annual levy and use the money to create an irrevocable ten-year trust fund?

Your question arose as a result of a controversy over the spending of interest from a trust fund established in 1981 by the City of Forsyth, a general government powers municipality. In 1981 the city received $750,000 from a partnership of utility companies as a fee for the city's issuance of industrial revenue bonds to finance pollution control devices for the power generation facilities at Colstrip, Montana.

The city council decided to invest the money by entering into a trust agreement with a trust company for management of the trust and referred to the voters the option of either using all of the trust income for annual budget expenditures or using only 50 percent of the trust income for annual budget expenditures. The ballot language also indicated that the city council would refer the matter to the voters again in ten years. In November 1981 the voters approved using 50 percent of the trust income for annual budget expenditures and reinvesting the remaining income.

An ordinance was passed by the city council after the vote authorizing $750,000 to be invested in the "City of Forsyth Trust Fund." The ordinance provided that the city council could enter into a contract with a trust company that would manage the trust fund for a period not to exceed ten years for a fee authorized by the council. A trust agreement was executed between the city and the First Trust Company of Montana. The agreement provided that the trustee would manage the trust in accordance with the voter preference and created a trust fund in which one-half of the trust income was reinvested and the other half transferred to the city at a time the city would determine. Neither in 1981 nor in any year thereafter was the trust corpus used to determine the city's general operating expenses or the annual tax levy.

In 1991, a second election was held where the voters again approved using one-half of the trust income for budget expenditures and reinvesting the remainder of the trust income. Believing that the vote only affected the original principal amount and having 22.5 percent more than the original principal in the fund, the city council entered into a new trust agreement, reserving the 22.5 percent in a subaccount from which the city could spend all of the income or principal. The remainder was to be managed as it had been for the original ten years with 50 percent of the interest going to cover city expenses and 50 percent being reinvested. You were requested by the mayor of Forsyth to seek an opinion as to whether there was a violation of the public vote by the establishment of this subaccount. As you correctly point out, however, the validity of the trust fund must be examined before addressing its management. Because I conclude, as explained below, that the establishment of the trust fund was not authorized by law, it is unnecessary to address the issue of the validity of the creation of the subaccount.

The City of Forsyth is an incorporated city with general government powers. In addressing the question presented here, this opinion is restricted to the validity of a trust fund established by a city, such as Forsyth, which has general government powers; it does not necessarily affect the validity of a trust fund created by a city with self-government powers.

As an incorporated city with general government powers, Forsyth is a municipal corporation vested with "legislative, administrative, and other powers provided or implied by law." Mont. Const. art. XI, § 4(1)(a). The powers of incorporated cities and towns must be liberally construed. Mont. Const. art. XI, § 4(2). This rule of construction, however, "does not of its own force confer new powers on local governments." 40 Op. Att'y Gen. No. 17 at 66 (1983). Although express or implied powers are to be construed liberally, there must nonetheless be some constitutional or statutory basis for their existence. Id.; see also 42 Op. Att'y Gen. No. 20 at 74-75 (1987) (county with general government powers has no inherent authority to establish housing for the elderly). Therefore, there must be a statutory provision that either explicitly or implicitly confers authority on the city to establish a trust fund with the bond issuance fee, saving the money at ten-year increments and not using it to reduce the annual all-purpose tax levy that supports the city's operating budget.

The city budgeting laws are based upon an annual cycle, with the city assessing its revenues and liabilities in each fiscal year. Except for some construction costs, all appropriations lapse at the end of a fiscal year. Mont. Code Ann. § 7-6-4240. There is no statutory provision that allows the city to create a "fund" that, in effect, takes monies out of this cycle. All of the city's revenues and appropriations are subject to the annual budgeting procedure. Every year the city council must determine the amount of anticipated revenue accruing to each fund and the total amount of anticipated expenditures from the fund. Mont. Code Ann. § 7-6-4229. Under Mont. Code Ann. § 7-6-4230, the tax levy necessary to support each fund is then calculated:

> (1) Following the determinations required by 7-6-4229, the council shall determine the amount to be raised for each fund for which a tax levy is to be made ***by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues***, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(Emphasis added.) In determining the amount of money to be raised for each fund, the council must add the "cash balance" in excess of outstanding unpaid warrants at the close of the preceding fiscal year in any fund.

It is unclear what fund should receive unanticipated revenues from a bond issuance fee. The fee is considered a cost of issuing the bonds and there is no requirement that it be used to

offset the bond debt. Mont. Code Ann. § 90-5-109. Regardless of what fund the money goes into, however, the fee must be considered a "cash balance" as it is money that is left over or remaining at the end of the fiscal year. 39 Op. Att'y Gen. No. 55 (1982). While the council may create a reserve fund for future contingencies, such a fund may not exceed one-third of the total amount authorized and appropriated for any given fund. Mont. Code Ann. § 7-6-4230(2).

The bond issuance fee was unanticipated revenue which, when it was received, had not been dedicated or appropriated to a particular fund. Nonetheless, I have found no statutory authority allowing a city to establish a fund which is separate and distinct from this annual budgeting process and the assessment of the annual tax levy. The bond issuance fee was a "cash balance" that had to be considered in setting the next year's budget and levy. This is the exclusive and mandatory method for establishing a city budget. By diverting the cash into an irrevocable trust fund, the city acted outside this statutory process.

As a general rule, a taxing authority may anticipate future debt or obligations and need not wait until money is actually due in order to levy a tax. McQuillin, Municipal Corporations § 39.02.10. Nonetheless, this general rule does not allow the accumulation of capital for some unknown contingency:

> This does not, however, warrant unnecessary accumulation in the treasury for the remote future or for contingencies which may never occur. Such a practice is unjust to the people, because it deprives them of the use of money taken from them for a considerable period, and is impolitic, as it may tempt those having the custody of funds to use them improperly.

Id. Montana follows this principle. In Rogge v. Petroleum County, 107 Mont. 36, 80 P.2d 80 (1938), the Court stated that a "tax cannot be levied for the sole purpose of accumulating funds in the public treasury, such as for remote or future contingencies that may never occur."

Here, I assume that the city continued to levy a tax while it accumulated extra money in the trust fund and that the interest from the trust fund was not sufficient to cover all of the city's expenditures and appropriations. In continuing to levy the tax while having surplus funds, the city essentially was levying the tax while maintaining and accumulating income in the trust fund. Such practice contravenes the general rule that a city may not continue to tax its citizens while accumulating funds for a remote contingency that may never occur.

The city could not validate its action by putting the issue to the voters. It is well established that the powers of

initiative and referendum do not extend to matters involving the annual budget. Mont. Code Ann. § 7-5-131(2)(a). The Greens at Ft. Missoula, LLC v. City of Missoula and Save the Fort, 52 St. Rep. 501, 897 P.2d 1078 (1995). The people of the State of Montana may approve or reject by referendum any act of the legislature except an appropriation of money. Mont. Const. art. III, § 5. The referenda of 1981 and 1991 concerned the appropriation of money to the trust fund and, as such, were ineffectual.

Further, even if a referendum on such a subject were authorized, the referendum and subsequent vote could not operate to ratify an action that was beyond the scope of the city's authority. It is the widely held rule that the power of referendum is restricted to legislation that is within the power of the municipality to enact or adopt. McQuillin, Municipal Corporations § 16.54. The electorate has no greater power to legislate than the municipality itself. Town of Hilton Head v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992). Under the budgeting laws, the city itself had no authority to carry over excess cash and revenue and a vote of the people cannot be used to ratify something over which the city has no discretion. See also State ex rel. Harper v. Waltermire, 213 Mont. 425, 429, 691 P.2d 826, 829 (1984) (invalidating initiative petition that went beyond initiative power authorized under constitution).

The establishment of this particular trust fund also was not a proper form of investment authorized by the statutes. Investment of monies not needed for immediate use must be made in accordance with Mont. Code Ann. § 7-6-202, § 7-6-4601, or § 17-6-204. None of these sections allow the creation of the type of ten-year irrevocable trust fund that was agreed upon by the city and managed by a third-party trustee. These statutes also do not operate as exceptions to the annual budgeting process. Only those revenues may be invested that have already gone through the budgeting process. Money that is "not necessary for immediate use" by a city, county or town may be invested in accordance with Mont. Code Ann. § 7-6-202, which allows investment in certain government securities or mutual funds or a trust limited to government securities.

Mont. Code Ann. § 7-6-202(4) was recently added by the Montana legislature to limit any investment under the statute to a five-year maturity date. Investments with such lengthy maturity dates would necessarily include revenues that could not be used for the general operation of a city, such as investment of a self-insurance fund. If the local government uses the unified investment fund, accumulated income from participation in the fund is remitted at least annually. Mont. Code Ann. § 17-6-204(3). A ten-year irrevocable trust fund where interest is automatically reinvested in the corpus of the trust is not specifically authorized by statute. While the city's goals of planning for future budget shortfalls may be financially

prudent, I must construe the law as it is written and cannot extend or grant powers which are not conferred by the statutes.

The trust fund also was not specifically authorized by the statutes. This was not the situation where a city accepted a grant or bequest of land or money on the condition that the land or money be placed in trust for specific public purposes. See, e.g., Mont. Code Ann. § 7-1-4124 (city authorized to solicit and accept bequests or grants and comply with any condition that is not contrary to the public interest).

You ask into what fund the trust fund monies should be placed. Mont. Code Ann. § 7-6-4133 appears to allow the deposit of the monies into the all-purpose general fund. Mont. Code Ann. § 7-6-4133(1) provides:

> Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

While this section generally applies to enterprises that are supported by an appropriation from the all-purpose general fund, it also allows for deposit of "all money received from other sources" supported in whole or in part by the all-purpose levy. Here, the bond issuance fee was intended to reimburse the city for its administrative costs which are normally supported by the all-purpose levy. The bond issuance fee should therefore be deposited in the all-purpose general fund and used to calculate the city's annual operating budget and to set future tax levies. This could result in an artificially low mill levy and create problems in future years. The city, nonetheless, has the discretion to spend the money as it chooses, including but not limited to retiring of bonded indebtedness, maximizing reserve accounts, acquiring new assets, transferring money to a capital improvement fund, or providing services. It is important to recognize, however, that a city's bond obligations or expenditures associated with the provision of a special service are excluded from the calculation of the city's operating budget. Mont. Code Ann. § 7-6-4222 (costs and income associated with special assessments are excluded from the budget and calculated separately), § 7-7-4264.

THEREFORE, IT IS MY OPINION:

> A city with general government powers must add any excess cash balance into the calculation of its annual budget and may not use such cash to create a ten-year irrevocable trust fund operated by a third-party trustee.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/elg/bjh

VOLUME NO. 46 OPINION NO. 16

BUILDING CODES - Municipal jurisdictional areas;
CITIES AND TOWNS - Municipal jurisdictional areas for building construction regulations;
COMMERCE, DEPARTMENT OF - Municipal jurisdictional areas for building construction regulations;
ADMINISTRATIVE RULES OF MONTANA - Section 8.70.211;
MONTANA CODE ANNOTATED - Sections 2-4-102(11)(a), 50-60-101(10);
MONTANA CONSTITUTION - Article II, section 8;
MONTANA LAWS OF 1985 - Chapter 352.

HELD: Any extension of a delineated municipal jurisdictional area extending beyond the corporate limits of a municipality must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211, which require a municipality to submit and the Department of Commerce to act upon a new request for approval of the extension.

April 4, 1996

Mr. Jon Noel, Director
Department of Commerce
1424 Ninth Avenue
P.O. Box 200501
Helena, MT 59620-0501

Dear Mr. Noel:

You have requested my opinion on the following question:

> Does a municipal jurisdictional area extended beyond the corporate limits of a municipality pursuant to Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211 automatically expand each time the municipality extends its corporate limits, or must the municipality submit and the Department of Commerce act upon a new request for approval of extension of a municipal jurisdictional area for building code enforcement each time the municipality extends its corporate limits?

You have informed me that, pursuant to Mont. Code Ann. § 50-60-302, the City of Billings was certified as a building code enforcement unit on August 14, 1979. At that time, the City received approval from the Montana Department of Administration to enforce the state building code in a municipal jurisdictional area extending 4½ miles beyond its corporate limits, as authorized under Mont. Code Ann. § 50-60-101(10)(b)(i).

You have further informed me that, on November 19, 1984, the City sent to the Department of Administration an "annual update" of the 4½-mile jurisdictional area. The Department regarded the November 19, 1984, document as an "extension notification" rather than a written request for extension of the municipal jurisdictional area. Therefore, the Department took no action as a result of the document received from the City.

On July 1, 1985, responsibility for enforcement of the state building construction standards was transferred from the Department of Administration to the Department of Commerce. 1985 Mont. Laws, ch. 352. On October 18, 1985, the Department of Commerce received notification from the City of Billings regarding another annexation to the city's corporate limits accompanied by a map illustrating the expanded corporate and building code enforcement limits. The Department took no action regarding the notification. The Department contends that, once a municipal jurisidictional area is approved to 4½ miles beyond the corporate limits of the city, it remains in effect for 4½ miles beyond those limits, no matter how the corporate limits are subsequently altered. Consequently, the Department maintains it is not required by rule or law to treat these written "extension updates" as written requests for a municipal jurisdictional area pursuant to Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211.

After careful review of the applicable law, I have concluded that the Department's position is erroneous. Pursuant to Mont. Code Ann. § 50-60-101(10)(a), a "municipal jurisidictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. The statute further provides that, upon request of a municipality, the Department of Commerce may approve extension of the jurisdictional area to include all or part of the area within 4½ miles of the corporate limits of a municipality, all of any platted subdivision which is partially within 4½ miles of the corporate limits of a municipality, and all of any zoning district adopted pursuant to title 76, chapter 2, part 1 or 2, which is partially within 4½ miles of the corporate limits. Mont. Code Ann. § 50-60-101(10)(b). In my opinion, the statute contemplates approval of finite boundaries of the municipal jurisdictional area following a request by the municipality. It does not speak in terms of a "rolling" jurisdictional area which is extended automatically with corporate limits.

An administrative rule of the Department of Commerce, Mont. Admin. R. 8.70.211, which was adopted to implement Mont. Code Ann. § 50-60-101(10)(b), wholly supports this interpretation of the statute. A substantive rule, adopted in accordance with the Montana Administrative Procedure Act, has the force of law. Mont. Code Ann. § 2-4-102(11)(a). The rule recognizes that municipalities may extend their inspection jurisdiction up to 4½ miles from their corporate limits upon written request and

approval by the Department. It further provides that the written request must include a statement as to how the additional workload will be handled, and that, once the city is granted authority to inspect within the 4½-mile jurisidictional area, the county may not inspect in that area unless the city relinquishes its right or loses its certification as a local government inspection program. Mont. Admin. R. 8.70.212(1). When a written request to extend the jurisidictional area is received, the Department of Commerce is required by Mont. Admin. R. 8.70.211 to use the following procedure in considering the extension:

> (a) The bureau [of the Department of Commerce] will publish a notice in a newspaper of general circulation ***in the area to be affected***.
>
> (b) The notice will also be posted in the county courthouse and in the city hall.
>
> (c) The notice will provide the opportunity for the public to submit written and verbal comments to the bureau regarding the extension.
>
> (i) Thirty days will be allowed for submittal of comments.
>
> (ii) Twenty days will be allowed ***for the affected public to request a hearing on the extension***. If 25 or more persons request a hearing or if the county or municipality requests a hearing, one will be held in the municipality by the bureau.
>
> (d) The final decision of the bureau regarding the extension will be published in the newspaper of general circulation.

Mont. Admin. R. 8.70.211(2) (emphasis supplied).

My function in construing legislation is to effect the intention of the legislature, and, in determining legislative intent, I look first to the plain meaning of the words used in the statute. State ex rel. Roberts v. Public Serv. Comm'n, 242 Mont. 242, 246, 790 P.2d 489, 492 (1990). In my opinion, the language and intent of the statute and the rule are clear. Establishment of a municipal jurisdictional area involves the creation of a finite, delineated area following notice to and an opportunity for the ***affected public***, the city and ***the county*** to comment and request a hearing on the area. I conclude that the establishment of such an area does not establish a rolling extension of jurisdiction which expands automatically whenever the corporate limits of the municipality are expanded. ***Any*** extension of a delineated municipal jurisdictional area must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211.

Interested parties have raised the issue of whether the Department's interpretation of Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211 violates the right to public participation set forth in article II, section 8 of the Montana Constitution. Like the courts, the Attorney General avoids deciding constitutional issues whenever possible. See Wolfe v. State Dep't of Labor & Indus., 255 Mont. 336, 339, 843 P.2d 338, 340 (1992), citing Ingraham v. Champion Int'l, 243 Mont. 42, 46, 793 P.2d 769, 771 (1990). Because I am able to resolve the questions presented by applying the rules of statutory construction, I will not reach the constitutional issue.

THEREFORE, IT IS MY OPINION:

> Any extension of a delineated municipal jurisdictional area extending beyond the corporate limits of a municipality must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211, which require a municipality to submit and the Department of Commerce to act upon a new request for approval of the extension.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/ks/brf

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1995. This table includes those rules adopted during the period January 1, 1996 through March 31, 1996 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1995, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in March 1996, appear. Vacancies scheduled to appear from May 1, 1996, through July 31, 1996, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 4, 1996.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
AIDS Advisory Council (Public Health and Human Services)			
Rep. John Bohlinger	Governor	not listed	3/21/1996
Billings			8/18/1996
Qualifications (if required): legislator			
Board of Architects (Commerce)			
Mr. Eugene Vogl	Governor	Rupert	3/27/1996
Billings			3/27/1999
Qualifications (if required): architect			
Board of Dentistry (Commerce)			
Dr. Wayne Hansen	Governor	Erler	3/29/1996
Billings			3/29/2001
Qualifications (if required): dentist			
Board of Passenger Tramway Safety (Commerce)			
Mr. Scott Bowen	Governor	not listed	3/1/1996
Big Sky			1/1/2000
Qualifications (if required): ski area operator			
Mr. Bill Flechsenhar	Governor	not listed	3/1/1996
Cascade			1/1/2000
Qualifications (if required): public member and skier			
Board of Science and Technology Development (Commerce)			
Mr. Doug Lair	Governor	Breum	3/6/1996
Big Timber			1/1/1997
Qualifications (if required): representing the private sector			
Public Health Improvement Task Force (Public Health and Human Services)			
Commissioner Gail Jones	Governor	not listed	3/29/1996
Deer Lodge			9/30/1996
Qualifications (if required): ex-officio member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
State Tax Appeal Board (Administration)			
Ms. Linda Vaughey Havre	Governor	Foster	3/11/1996 3/1/2001
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Advisory Council on Disability (Administration)		
Mr. James Meldrum, Helena Qualifications (if required): none specified	Governor	6/16/1996
Mr. Peter Leech, Missoula Qualifications (if required): none specified	Governor	6/16/1996
Ms. Sherri Anderson, Helena Qualifications (if required): none specified	Governor	6/16/1996
Mr. John Shea, Anaconda Qualifications (if required): none specified	Governor	6/16/1996
Ms. Mary Morrison, Missoula Qualifications (if required): none specified	Governor	6/16/1996
Mr. Michael Regnier, Missoula Qualifications (if required): none specified	Governor	6/16/1996
Mr. Bill Roberts, Helena Qualifications (if required): none specified	Governor	6/16/1996
Aging Advisory Council (Governor)		
Ms. Pauline Nikolaisen, Kalispell Qualifications (if required): member from Region IV	Governor	7/18/1996
Ms. Mary Alice Rehbein, Lambert Qualifications (if required): member from Region I	Governor	7/18/1996
Ms. Dorothea C. Neath, Helena Qualifications (if required): member from Region IV	Governor	7/18/1996

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor) cont.		
Ms. Vi Thomson, Missoula Qualifications (if required): member from Region XI	Governor	7/18/1996
Agricultural Development Council (Agriculture)		
Ms. Julie Burke, Glasgow Qualifications (if required): active in agriculture	Governor	7/1/1996
Mr. Everett Snortland, Conrad Qualifications (if required): active in agriculture	Governor	7/1/1996
Mr. John Swanz, Judith Gap Qualifications (if required): active in agriculture	Governor	7/1/1996
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)		
Mr. Tim Wetstein, Joliet Qualifications (if required): member of Montana Alfalfa Seed Association	Governor	7/1/1996
Board of Banking (Commerce)		
Mr. Loren Tucker, Virginia City Qualifications (if required): public member	Governor	7/1/1996
Mr. Robert T. Baxter, Thompson Falls Qualifications (if required): officer of a state bank	Governor	7/1/1996
Board of Barbers (Commerce)		
Ms. Adeline Fisher, Butte Qualifications (if required): public member	Governor	7/1/1996
Mr. Rodney L. Grover, Helena Qualifications (if required): barber	Governor	7/1/1996

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Board of Cosmetologists (Commerce)		
Ms. Mary Brown, Helena	Governor	7/1/1996
Qualifications (if required): licensed cosmetologist		
Board of Hearing Aid Dispensers (Commerce)		
Mr. Walter Hopkins, Great Falls	Governor	7/1/1996
Qualifications (if required): hearing aid dispenser		
Mr. Ben Havdahl, Helena	Governor	7/1/1996
Qualifications (if required): public member		
Board of Landscape Architects (Commerce)		
Mr. Jim Foley, Billings	Governor	7/1/1996
Qualifications (if required): licensed architect		
Board of Nursing (Commerce)		
Ms. Denise Hochberger, Chester	Governor	7/1/1996
Qualifications (if required): licensed practical nurse		
Ms. Jean E. Ballantyne, Billings	Governor	7/1/1996
Qualifications (if required): registered nurse and an educator		
Board of Nursing Home Administrators (Commerce)		
Ms. Fern Prather, Big Timber	Governor	5/28/1996
Qualifications (if required): member of public organization		
Board of Pharmacy (Commerce)		
Mr. Ed J. Harrington, Belgrade	Governor	7/1/1996
Qualifications (if required): pharmacist		
Board of Physical Therapy Examiners (Commerce)		
Mr. Robert Bruce Bowman, Lewistown	Governor	7/1/1996
Qualifications (if required): physical therapist		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Board of Plumbers (Commerce)		
Mr. Thor A. Jackola, Kalispell	Governor	5/4/1996
Qualifications (if required): mechanical engineer		
Board of Public Accountants (Commerce)		
Ms. Ivah G. Schmitz, Missoula	Governor	7/1/1996
Qualifications (if required): licensed public accountant		
Board of Radiologic Technologists (Commerce)		
Dr. Dennis S. Yutani, Glasgow	Governor	7/1/1996
Qualifications (if required): medical doctor		
Ms. Debbie Sanford, Lewistown	Governor	7/1/1996
Qualifications (if required): limited permit technologist		
Ms. Judy Martz, Butte	Governor	7/1/1996
Qualifications (if required): public member		
Ms. Cynthia L. Smith, Billings	Governor	7/1/1996
Qualifications (if required): radiologic technologist		
Board of Real Estate Appraisers (Commerce)		
Mr. Patrick Asay, Cardwell	Governor	5/1/1996
Qualifications (if required): licensed appraiser		
Board of Realty Regulation (Commerce)		
Ms. Marcia Allen, Helena	Governor	5/9/1996
Qualifications (if required): realty business and a Democrat from Western Congressional District		
Board of Regents of Higher Education (Education)		
Mr. Michael Green, Malta	Governor	6/1/1996
Qualifications (if required): student representative		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Board of Sanitarians (Commerce)		
Ms. Patricia M. Switzer, Richey	Governor	7/1/1996
Qualifications (if required): public member		
Board of Veterans' Affairs (Military Affairs)		
Mr. Thaddeus Mayer, Missoula	Governor	5/18/1996
Qualifications (if required): honorably discharged from military service		
Child Care Advisory Council (Family Services)		
Ms. Judy Tibbets, Miles City	Governor	6/30/1996
Qualifications (if required): represents persons interested in child care		
Ms. Kathleen Miller Green, Missoula	Governor	6/30/1996
Qualifications (if required): child care provider		
Ms. Patty LaPlant, Browning	Governor	6/30/1996
Qualifications (if required): represents child care providers		
Ms. Mary Gibson, Kalispell	Governor	6/30/1996
Qualifications (if required): represents persons interested in child care		
Ms. Janet Bush, Missoula	Governor	6/30/1996
Qualifications (if required): represents persons interested in child care		
Ms. Linda Patrick Briese, Helena	Governor	6/30/1996
Qualifications (if required): represents state agency		
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Ms. Joan Mandeville, Great Falls	Governor	7/1/1996
Qualifications (if required): represents Montana's Independent Local Phone Exchange Co.		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services) cont.		
Ms. Cathy Brightwell, Helena Qualifications (if required): representative of an Interlata Interchange Carrier	Governor	7/1/1996
Mr. James L. Allen, Lolo Qualifications (if required): handicapped member	Governor	7/1/1996
Mr. Edward Van Tighem, Great Falls Qualifications (if required): handicapped member	Governor	7/1/1996
Community Services Advisory Council (Governor)		
Ms. Jan Kenitzer, Baker Qualifications (if required): representing private citizens	Governor	7/1/1996
Mr. Charles McCarthy, Helena Qualifications (if required): representing human services	Governor	7/1/1996
Ms. Norma Bixby, Lame Deer Qualifications (if required): representing tribal government	Governor	7/1/1996
Electrical Board (Commerce)		
Mr. Gene Kolstad, Billings Qualifications (if required): public member	Governor	7/1/1996
Governor's Advisory Council on Disability (Administration)		
Ms. Anne MacIntyre, Helena Qualifications (if required): ex-officio member	Governor	6/16/1996
Historical Society Board of Trustees (Historical Society)		
Ms. Virginia Lucht, Bigfork Qualifications (if required): public member	Governor	7/1/1996

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Historical Society Board of Trustees (Historical Society)	cont.	
Ms. Jean Birch, Great Falls	Governor	7/1/1996
Qualifications (if required): public member		
Ms. Anne Hibbard, Helena	Governor	7/1/1996
Qualifications (if required): public member		
Microbusiness Advisory Council (Commerce)		
Mr. Peter Greybull, Lodge Grass	Governor	6/30/1996
Qualifications (if required): represents Indian tribes		
Ms. Jody Smith, Miles City	Governor	6/30/1996
Qualifications (if required): microbusiness owner		
Mr. David T. Bond, Whitefish	Governor	6/30/1996
Qualifications (if required): microbusiness owner		
Ms. Mary Brydich, Helena	Governor	6/30/1996
Qualifications (if required): represents cities with population greater than 15,000		
Mr. Doug Boutilier, Helena	Governor	6/30/1996
Qualifications (if required): represents banking industry		
Ms. Janene Brown, Libby	Governor	6/30/1996
Qualifications (if required): represents city with population less than 15,000		
Montana Library Services Advisory Council (Education)		
Mr. Jim Heckel, Great Falls	Chairperson	6/30/1996
Qualifications (if required): none specified		
Montana Mint Committee (Agriculture)		
Mr. Brian Schweitzer, Whitefish	Governor	7/1/1996
Qualifications (if required): active mint grower		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Montana Special Education Advisory Panel (Office of Public Instruction)		
Ms. Maria Pease, Lodge Grass Qualifications (if required): parent of child with disabilities	Superintendent	6/30/1996
Ms. Kim Miller, Lewistown Qualifications (if required): regular classroom teacher	Superintendent	6/30/1996
Ms. Tammy Lacey, Fairfield Qualifications (if required): general educator	Superintendent	6/30/1996
Ms. Mary Susan Fishbaugh, Billings Qualifications (if required): higher education	Superintendent	6/30/1996
Ms. Connie Hepburn, Philipsburg Qualifications (if required): parent of child with disabilities	Superintendent	6/30/1996
Rep. Royal C. Johnson, Billings Qualifications (if required): legislator	Superintendent	6/30/1996
Mr. Dale Lambert, Hobson Qualifications (if required): teacher of children with disabilities	Superintendent	6/30/1996
Ms. Mary Hudspeth, Libby Qualifications (if required): county superintendent	Superintendent	6/30/1996
Ms. Gail Marker, Billings Qualifications (if required): deaf/blind representative	Superintendent	6/30/1996
Ms. Merry Fahrman, East Helena Qualifications (if required): general educator	Superintendent	6/30/1996
Ms. Kristie Brannman, Helena Qualifications (if required): individual with a disability	Superintendent	6/30/1996

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Mr. Leonard Orth, Billings	Superintendent	6/30/1996
Qualifications (if required): special education program administrator		
Ms. Crystal Dreese, Billings	Superintendent	6/30/1996
Qualifications (if required): individual with a disability		
Mr. Joe Mathews, Helena	Superintendent	6/30/1996
Qualifications (if required): represents state agency		
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Mr. Richard Levandowski, Helena	Governor	6/30/1996
Qualifications (if required): represents Fire Prevention and Investigation Bureau		
Risk Management Advisory Council (Administration)		
Ms. Geralyn Driscoll, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Mr. Ralph Peck, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Captain Thomas Muri, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Mr. Pat Chenovick, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Ms. Janie Wunderwald, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Mr. Forest Farris, Helena	Governor	6/22/1996
Qualifications (if required): none specified		

Board/current position holder	Appointed by	Term end
Risk Management Advisory Council (Administration) cont.		
Ms. Cheryl Bozdog, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Laura Calkin, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Karen Munro, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Randy Mosley, Helena Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor	6/22/1996
Mr. John Skufca, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Mike Zahn, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Ann Gilkey, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Michael Buckley, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Donna Campbell, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Thomas H. Gibson, Bozeman Qualifications (if required): none specified	Governor	6/22/1996

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Risk Management Advisory Council (Administration) cont.		
Ms. Barb Charlton, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Mr. Gary Managhan, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Mr. Bruce Swick, Helena	Governor	6/22/1996
Qualifications (if required): none specified		
Ms. Marci Lynn, Helena	Governor	6/22/1996
Qualifications (if required): represents Department of Administration		
State Library Commission (Education)		
Ms. Anne Hauptman, Billings	Governor	5/22/1996
Qualifications (if required): public member		
Ms. Myrna Z. Lundy, Fort Benton	Governor	5/22/1996
Qualifications (if required): public member		
SummitNet Executive Council (Administration)		
Dr. Richard Crofts, Helena	Commissioner of Higher Education	6/30/1996
Qualifications (if required): none specified		
Mr. Michael (Mick) J. Robinson, Helena	Governor	6/30/1996
Qualifications (if required): Information Technology Advisory Council representative		
Ms. Lois A. Menzies, Helena	Governor	6/30/1996
Qualifications (if required): Director of the Department of Administration		
Mr. Bob Person, Helena	Governor	6/30/1996
Qualifications (if required): Information Technology Advisory Council representative		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
SummitNet Executive Council (Administration) cont.		
Mr. Dennis M. Taylor, Helena	Governor	6/30/1996
Qualifications (if required): Information Technology Advisory Council representative		
Ms. Janet Kelly, Miles City	Governor	6/30/1996
Qualifications (if required): local government representative		
Teachers' Retirement Board (Administration)		
Mr. James E. Cowan, Seeley Lake	Governor	7/1/1996
Qualifications (if required): public member		
Tourism Advisory Council (Commerce)		
Ms. Thelma M. Baker, Missoula	Governor	7/1/1996
Qualifications (if required): public member		
Mr. Carl Kochman, Great Falls	Governor	7/1/1996
Qualifications (if required): public member		
Mr. Ed Henrich, Anaconda	Governor	7/1/1996
Qualifications (if required): representing Innkeepers		
Mr. Larry McRae, Kalispell	Governor	7/1/1996
Qualifications (if required): public member		
Mr. Arnold D. "Smoke" Elser, Missoula	Governor	7/1/1996
Qualifications (if required): public member		
Western Interstate Commission on Higher Education (University System)		
Mr. Francis J. Kerins, Helena	Governor	6/19/1996
Qualifications (if required): public member		
Dr. Jeff Baker, Helena	Governor	6/19/1996
Qualifications (if required): Commissioner of Higher Education		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1996 through July 31, 1996

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Mr. Larry McRae, Kalispell Qualifications (if required): public member	Governor	7/1/1996
Mr. Arnold D. "Smoke" Elser, Missoula Qualifications (if required): public member	Governor	7/1/1996
Western Interstate Commission on Higher Education (University System)		
Mr. Francis J. Kerins, Helena Qualifications (if required): public member	Governor	6/19/1996
Dr. Jeff Baker, Helena Qualifications (if required): Commissioner of Higher Education	Governor	6/19/1996